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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket 90-041]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding West Virginia to the list of validated brucellosis-free States. We have determined that West Virginia meets the criteria for classification as a validated brucellosis-free State.

EFFECTIVE DATE: May 2, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Officer, Swine Diseases Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on January 5, 1990 (55 FR 419–420, Docket Number 89–196), we amended the brucellosis regulations in 9 CFR part 78 concerning the interstate movement of swine by adding West Virginia to the list of validated brucellosis-free States in § 78.43. Comments on the interim rule were required to be received on or before March 6, 1990. We did not receive any comments. The facts presented in the interim rule still provide a basis for this rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Herd owners in West Virginia are affected by this action. It allows breeding swine to be moved interstate from West Virginia without being tested for brucellosis. Approximately nine swine are tested for brucellosis in West Virginia each year, at an average cost to the seller of $11.88 per test, resulting in a potential savings of $106.92 for West Virginia swine herd owners. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, fewer than five regularly ship breeding swine interstate from West Virginia. Of these herd owners, four would be considered small entities.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78.43 and that was published at 55 FR 419–420 on January 5, 1990.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 28th day of March 1990.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–7466 Filed 3–30–90; 8:45 am]
BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AD19

Stabilization and Decontamination Priority and Trusteeship Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the provisions of its property/accident recovery insurance regulations applicable to commercial power reactor licensees. The changes (1) clarify the scope and timing of the stabilization and decontamination processes after an accident at a covered reactor; (2) specify that the insurance is required to ensure that commercial power reactor licensees will have sufficient funds to carry out their obligation to clean up and decontaminate after an accident; and (3) eliminate the requirement that insurance proceeds after an accident are paid to an independent trustee. This rule responds to issues raised in three petitions for rulemaking.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–1280.

SUPPLEMENTARY INFORMATION:

I. Background

After the receipt of three petitions for rulemaking assigned Docket Nos. (PRM50–51) from Linda S. Stein, Steptoe & Johnson, counsel to American Nuclear Insurers and MAERP Reinsurance Association (ANI/MAERP); (PRM–50–51A) from J.B. Knotts, Jr., Bishop, Cook, Purcell & Reynolds, counsel to the Edison Electric Institute (EEI), the Nuclear Utility Management and Resources Council (NUMARC) and several power plant licensees; and (PRM–50–51B) from Peter D. Lederer, Baker & McKenzie, counsel to Nuclear Mutual Limited and Nuclear Electric Insurance Limited (NML and NEIL–II), the Commission published a notice of receipt requesting public comment on the petitions in the **Federal Register** of September 19, 1988 (53 FR 36335). The petitions were filed in response to a final rule on changes in property insurance requirements published by the Commission on August 5, 1987 (52 FR 28963). These petitions sought (1) clarification of the scope and timing of the stabilization process after an accident at a covered reactor; (2) clarification of the procedures by which the NRC determines and approves expenditures of funds necessary for decontamination and cleanup, and clarification of how such procedures affect both insurer's needs to secure appropriate proofs of loss and when payments may be made for non-cleanup purposes; (3) a change in the terminology of the required insurance from "property" insurance to "decontamination liability" insurance so as to better forestall claims on insurance proceeds by a licensee's bondholders; and (4) rescission of the provision that proceeds of the required insurance are to be paid to an independent trustee, who will disburse the proceeds for decontamination and cleanup of the facility before any other purpose.

Four comments were received on the petitions for rulemaking, all of which supported the amendments recommended in the petitions. The Commission responded to the comments received on the petitions in a proposed rule published on November 6, 1989 (54 FR 46624). This final rule, in effect, grants these petitions and completes NRC action in response to PRMs 50–51, 50–51A, and 50–51B.

II. Analysis of and Response to Comments

On November 6, 1989, the Commission published in the **Federal Register** (54 FR 46624) a proposed rule to amend 10 CFR 50.54(w). The rule was developed in response to the three petitions for rulemaking discussed above. As of January 18, 1990, the NRC received seven comments on the proposed rule. Six comments came from electric utilities or their representatives. One comment came from the Association of the Bar of the City of New York. All commenters essentially supported the Commission's rulemaking, although some took issue with specific provisions. Two aspects of the proposed rule, in particular, were opposed by several commenters. The first is the statement in the preamble of the proposed rule that the NRC retains the authority to require an independent trustee to hold and to disburse insurance proceeds in individual cases, if warranted. Further, the NRC expressed its intention that if the NRC obtains authority to receive and retain insurance proceeds itself, it will consider whether to exercise this authority and the best method of implementing the authority (54 FR 46624, at p. 46627).

In support of their objections, the commenters refer to the case cited in the proposed rule—In re Smith-Douglass (Nos. 87–1663, –1684 (4th Circuit, September 6, 1988))—and take issue with the Commission's conclusion that the decision in this case justifies future reimposition of a trusteeship requirement. The Commission continues to believe that uncertainties remain with respect to interpretation of this and similar decisions. Consequently, if the Commission concludes that future conditions warrant reinstitution of the trusteeship requirement, it will reopen this issue for reconsideration. If the Commission does make such a decision, however, it will provide ample opportunity for public comment at that time. Because no provision of this final rule is affected by these concerns, the Commission proposes no further discussion or action at this time.

The second issue raised by several commenters concerns how the Commission might address possible increases in accident cleanup costs resulting from inflation or other factors. Commenters expressed the opinion that there is insufficient experience from which to develop an effective formula to estimate future accident cleanup costs. Furthermore, such a formula would not be able to account for advances in technology that might reduce future costs. Commenters suggest that rather than use a formula to estimate future cleanup costs and consequently establish future insurance requirements, the NRC reevaluate accident cleanup costs every 3 to 5 years by conducting specific studies using then-current technology. One commenter recommended using a simple formula based on the Consumer Price Index to estimate future cleanup costs.

Since publication of the proposed rule, the NRC's contractor has updated NUREG/CR–2601 [1] (hereinafter cited as Addendum 1) which provided the basis for the $1.06 billion in insurance currently required. The report found that in 1989 dollars, approximately $1.03 billion would be needed for cleanup after a severe accident at a reference boiling water reactor. In addition, depending on whether a 4 percent or an 8 percent inflation rate is assumed, an additional $186.5 million to $409.9 million would be needed to cover incremental cost escalation during the cleanup process. In evaluating these costs, the contractor considered labor, energy, waste disposal, and nuclear insurance as those cost components with the greatest potential effect on cost escalation.

Except for nuclear insurance, these factors are the same as those used in the Commission's decommissioning rule, although the relative weights of the factors vary (53 FR 24018, June 27, 1988) (See 10 CFR 50.75(c)(2)). The Commission notes, however, that commenters had ample opportunity to evaluate and comment upon the technical studies that the NRC used as the basis for its decommissioning requirements. No such opportunity has been available heretofore for Addendum 1. Consequently, the Commission concludes that the public interest would best be served if the issue of whether and to what extent the amount of accident cleanup insurance should increase is deferred pending public comment on Addendum 1. As part of its conclusion, the Commission further notes that most licensees already carry accident cleanup insurance in amounts that exceed the maximum amount predicted by the formula in Addendum 1. Thus, there is no compelling health or safety reason to increase the required amount of insurance in advance of public comment. Concurrently, the Commission believes that the public comments on Addendum 1 will enable the Commission to make more informed decisions in connection with any future

[1] "Technology, Safety and Costs of Decommissioning Reference Light Water Reactors Following Postulated Accidents—Addendum 1," Pacific Northwest Laboratory, to be published. This report will be available by approximately May 1990 for purchase from the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. A notice of availability will be published.

rulemaking proceeding to increase the amount of required insurance.

Individual commenters also have raised specific concerns with the proposed rule. These concerns include the stabilization priority threshold, the 60-day priority period, and the cleanup plan. One commenter indicates that, pursuant to proposed 10 CFR 50.54(w)(4)(i), insurance proceeds would only be required to be dedicated to stabilization and decontamination if the estimated costs exceeded $100 million. Further, this priority would initially apply to stabilization costs for 60 days and could be extended in 60-day increments. Within 30 days after the reactor is stabilized, the licensee is required to submit a cleanup plan which must be approved by the Director of the Office of Nuclear Reactor Regulation. This commenter also suggests that the rule should clarify (a) whether the NRC or the licensee provides the cost estimate, and (b) how the Director of the Office of Nuclear Reactor Regulation determines the length of the stabilization priority and the criteria for approving the cleanup plan.

The NRC believes that these and similar issues have been discussed in previous rulemaking and that additional specificity may be cumbersome and counterproductive. The Commission clearly intends to rely on licensees to prepare initial cost estimates of accidents, although it is conceivable that the Commission could prepare its own confirmatory estimates if unusual circumstances warranted. Furthermore, a cut-off figure of $100 million represents a relatively minor accident where the availability of funds would not, as a practical matter, be at issue. Thus, it is very unlikely that the Commission would dispute estimates unless they significantly exceeded $100 million. Further, § 50.54(w)(4)(i) explicitly defines what constitutes stabilization. Therefore, it is unlikely that serious disagreements would arise concerning when a reactor is stabilized.

However, if disputes over stabilization should arise, the Commission's Rules of Practice under 10 CFR part 2 provide adequate procedures to resolve them. Similarly, part 2 procedures are also available to resolve disputes that may arise over the content of cleanup plans. The Commission notes that the proposed rule was drafted in response to the suggestions of petitioners representing most power reactor licensees and their insurers. The petitioners did not raise these specific issues in their petitions or in comments on the proposed rule. Consequently, the Commission concludes that the suggested changes to the proposed rule are not needed.

One commenter takes issue with the following statement in the Regulatory Analysis published in connection with the proposed rule: "Although the effect of these formulas, if developed and adopted, would be to increase the required amount of insurance for some licensees, there should be little impact on insurance costs to licensees because almost all licensees buy the maximum amount of insurance available" (54 FR 46624, at p. 46628, November 6, 1989). This commenter states that, "This may have been true in the past, however we do not agree with this assessment. In fact, we did not automatically purchase the maximum amount of insurance available this year following an increase in available coverage."

Notwithstanding this commenter's decision not to buy additional insurance, the Commission notes that the maximum amount of insurance currently offered exceeds by a significant margin the amount that would be required if the maximum figure suggested in Addendum 1 were adopted. Most licensees currently purchase substantially more than this maximum. Thus, the Commission stands by the statement in question.

These amendments provide relief from restrictions under regulations due to take effect on April 4, 1990. Therefore, pursuant to 5 U.S.C. § 553(d)(1), the Commission is making the rule effective on the date of publication in the **Federal Register** without the customary 30-day waiting period.

III. Finding of No Significant Environmental Impact; Availability

Noting that the text of the final rule is identical to that of the proposed rule, the Commission has reviewed the environmental assessment and finding of no significant environmental impact published in the **Federal Register** on November 6, 1989 (54 FR 46624, at 46627) in connection with the proposed rule. On the basis of that review, and after considering the public comments and determining that such comments do not affect the conclusion reached in the earlier finding of no significant impact, the Commission has concluded that this amendment to 10 CFR 50.54(w) is not a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

IV. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The final rule has been referred to the Office of Management and Budget for review and approval.

Public reporting burden for this collection of information is estimated to average 2,000 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0011), Office of Management and Budget, Washington, DC 20503.

V. Regulatory Analysis

On November 6, 1989, the Commission published in the **Federal Register** (54 FR 46624) a proposed rule to amend 10 CFR 50.54(w). The rule was developed in response to three petitions for rulemaking. Notice of receipt of these petitions was published in the **Federal Register** on September 19, 1988 (53 FR 36335). These petitions sought clarification of the stabilization and decontamination priority provisions and rescission of the trusteeship provisions currently contained in 10 CFR 50.54(w). The petitions further stated that the trusteeship provisions may actually have an effect counter to their intended purpose by delaying the payment of claims and thus possibly the cleanup process. The rule developed in response to the petitions for rulemaking should help clarify the mechanism by which accident cleanup funds may be guaranteed to be used for their intended purpose. Even without formal stabilization and decontamination priority and trusteeship provisions, the NRC has authority to take appropriate enforcement action to order cleanup in the unlikely event of an accident. By rescinding the trusteeship requirement, the Commission would be eliminating licensees' costs to obtain trustee services. Thus, the rule will not create substantial costs for licensees.

The rule will not have significant impacts on State and local governments

and geographical regions, on the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this rule.

VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule does not have a significant economic impact upon a substantial number of small entities. The rule only affects licensees of nuclear power plants. None of the holders of these licenses fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

VII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule because this rule will not impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1224, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § § 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(1), (1)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c) 50.64(b), and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and § § 50.49(d), (h), and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.54 is amended by revising paragraph (w) to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(w) Each electric utility licensee under this part for a production or utilization facility of the type described in § 50.21(b) or § 50.22 shall take reasonable steps to obtain insurance available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the licensee's obligation, in the event of an accident at the licensee's reactor, to stabilize and decontaminate the reactor and the reactor station site at which the reactor experiencing the accident is located, provided that:

(1) The insurance required by paragraph (w) of this section must have a minimum coverage limit for each reactor station site of either $1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. The required insurance must clearly state that, as and to the extent provided in paragraph (w)(4) of this section, any proceeds must be payable first for stabilization of the reactor and next for decontamination of the reactor and the reactor station site. If a licensee's coverage falls below the required minimum, the licensee shall within 60 days take all reasonable steps to restore its coverage to the required minimum. The required insurance may, at the option of the licensee, be included within policies that also provide coverage for other risks, including, but not limited to, the risk of direct physical damage.

(2)(i) With respect to policies issued or annually renewed on or after April 2, 1991, the proceeds of such required insurance must be dedicated, as and to the extent provided in this paragraph, to reimbursement or payment on behalf of the insured of reasonable expenses incurred or estimated to be incurred by the licensee in taking action to fulfill the licensee's obligation, in the event of an accident at the licensee's reactor, to ensure that the reactor is in, or is returned to, and maintained in, a safe and stable condition and that radioactive contamination is removed or controlled such that personnel exposures are consistent with the occupational exposure limits in 10 CFR part 20. These actions must be consistent with any other obligation the licensee may have under this chapter and must be subject to paragraph (w)(4) of this section. As used in this section, an "accident" means an event that involves the release of radioactive material from its intended place of confinement within the reactor or on the reactor station site such that there is a present danger of release off site in amounts that would pose a threat to the public health and safety.

(ii) The stabilization and decontamination requirements set forth in paragraph (w)(4) of this section must apply uniformly to all insurance policies required under paragraph (w) of this section.

(3) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.

(4)(i) In the event of an accident at the licensee's reactor, whenever the estimated costs of stabilizing the licensed reactor and of decontaminating the reactor and the reactor station site exceed $100 million, the proceeds of the insurance required by paragraph (w) of this section must be dedicated to and used, first, to ensure that the licensed reactor is in, or is returned to, and can be maintained in, a safe and stable condition so as to prevent any significant risk to the public health and safety and, second, to decontaminate the reactor and the reactor station site in accordance with the licensee's cleanup plan as approved by order of the Director of the Office of Nuclear Reactor Regulation. This priority on insurance proceeds must remain in effect for 60 days or, upon order of the Director, for such longer periods, in increments not to exceed 60 days except

as provided for activities under the cleanup plan required in paragraphs (w)(4)(iii) and (w)(4)(iv) of this section, as the Director may find necessary to protect the public health and safety. Actions needed to bring the reactor to and maintain the reactor in a safe and stable condition may include one or more of the following, as appropriate: (A) Shutdown of the reactor; (B) Establishment and maintenance of long-term cooling with stable decay heat removal; (C) Maintenance of sub-criticality; (D) Control of radioactive releases; and (E) Securing of structures, systems, or components to minimize radiation exposure to onsite personnel or to the offsite public or to facilitate later decontamination or both.

(ii) The licensee shall inform the Director of the Office of Nuclear Reactor Regulation in writing when the reactor is and can be maintained in a safe and stable condition so as to prevent any significant risk to the public health and safety. Within 30 days after the licensee informs the Director that the reactor is in this condition, or at such earlier time as the licensee may elect or the Director may for good cause direct, the licensee shall prepare and submit a cleanup plan for the Director's approval. The cleanup plan must identify and contain an estimate of the cost of each cleanup operation that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation of the reactor or to apply to the Commission under § 50.82 for authority to decommission the reactor and to surrender the license voluntarily. Cleanup operations may include one or more of the following, as appropriate: (A) Processing any contaminated water generated by the accident and by decontamination operations to remove radioactive materials; (B) Decontamination of surfaces inside the auxiliary and fuel-handling buildings and the reactor building to levels consistent with the Commission's occupational exposure limits in 10 CFR part 20, and decontamination or disposal of equipment; (C) Decontamination or removal and disposal of internal parts and damaged fuel from the reactor vessel; and (D) Cleanup of the reactor coolant system.

(iii) Following review of the licensee's cleanup plan, the Director will order the licensee to complete all operations that the Director finds are necessary to decontaminate the reactor sufficiently to permit the licensee either to resume operation of the reactor or to apply to the Commission under § 50.82 for authority to decommission the reactor and to surrender the license voluntarily. The Director shall approve or disapprove, in whole or in part for stated reasons, the licensee's estimate of cleanup costs for such operations. Such order may not be effective for more than 1 year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than 6 months.

(iv) Of the balance of the proceeds of the required insurance not already expended to place the reactor in a safe and stable condition pursuant to paragraph (w)(2)(i) of this section, an amount sufficient to cover the expenses of completion of those decontamination operations that are the subject of the Director's order shall be dedicated to such use, provided that, upon certification to the Director of the amounts expended previously and from time to time for stabilization and decontamination and upon further certification to the Director as to the sufficiency of the dedicated amount remaining, policies of insurance may provide for payment to the licensee or other loss payees of amounts not so dedicated, and the licensee may proceed to use in parallel (and not in preference thereto) any insurance proceeds not so dedicated for other purposes.

* * * * *

Dated at Rockville, Maryland, this 23rd day of March 1990.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 90-7462 Filed 3-20-90; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM89-17-000]

Deletion of Subpart H; Transportation of Natural Gas From the Outer Continental Shelf on Behalf of Local Distribution Companies

Issued March 23, 1990.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is deleting from its regulations subpart H of part 284 because it has been superseded and rendered redundant by subpart K of part 284. Subpart H is a statement of policy adopted by the Commission in 1980 to facilitate the transportation of natural gas produced from certain leases on the Outer Continental Shelf (OCS) owned in whole or in part by an eligible local distribution company for its general system supply. Nine years later, in Order Nos. 509 and 509-A, the Commission adopted subpart K of part 284, which provided every jurisdictional interstate natural gas pipeline that transports gas on or across the OCS with a blanket certificate authorizing nondiscriminatory transportation of natural gas on behalf of others and required every OCS pipeline to file tariffs to implement that blanket certificate authorization. Since subpart K is a comprehensive regulatory scheme that supersedes the specialized provisions of subpart H, subpart H no longer serves a useful purpose and will be deleted from the Commission's regulations.

DATES: This final rule is effective March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

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 Hearing Room A at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Hearing Room A, 825 North Capitol Street, NE., Washington, DC 20426.

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

ORDER NO. 522

Issued March 23, 1990.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is deleting from its regulations subpart H of part 284,[1] because it has been superseded and rendered redundant by subpart K of part 284.[2]

II. Background

Subpart H of part 284, "Transportation of Natural Gas from the Outer Continental Shelf on Behalf of Local Distribution Companies," is a statement of policy adopted by the Commission in 1980 [3] to facilitate the transportation of natural gas produced from certain leases on the Outer Continental Shelf (OCS) owned in whole or in part by an eligible local distribution company (LDC) for its general system supply. Subpart H was promulgated in response to a congressional mandate in section 603 of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA).[4] The purpose of section 603 was to encourage interstate transportation of OCS gas. It reflected congressional concern that the Commission's policy on LDC participation on the OCS, which at that time was evolving in case-by-case adjudication, created uncertainty that tended to discourage LDC participation.

Subpart H encouraged expanded participation by LDCs in the acquisition of OCS leases and development of natural gas resources on the OCS by facilitating the transportation of OCS gas in interstate commerce.[5] Under subpart H, the Commission gave priority to the processing of applications for transportation of distributor-owned OCS gas. The Commission also gave LDCs the option of applying for transportation authorization on behalf of the transporting pipeline based on either section 7(c) of the Natural Gas Act [6] or section 311 of the Natural Gas Policy Act of 1978 (NGPA).[7]

Section 284.243 set forth a statement of Commission policy in furtherance of such transportation. Section 284.244 set forth application requirements for transportation by interstate pipelines of gas covered by the rule, while § 284.245 prescribed various terms and conditions. Finally, § 284.246 clarified that subpart H does not in any way limit any other form of transportation available to interstate and intrastate pipelines to transport such gas.

Nine years later, in Order Nos. 509 [8] and 509–A,[9] the Commission adopted subpart K of part 284, "Transportation of Natural Gas on the Outer Continental Shelf by Interstate Natural Gas Pipelines on Behalf of Others." [10] Subpart K provides every jurisdictional interstate natural gas pipeline that transports gas on or across the OCS with a blanket certificate authorizing and requiring nondiscriminatory transportation of natural gas on behalf of others, and requires every OCS pipeline to file tariffs to implement that blanket certificate authorization. The service performed under the blanket certificate includes both firm and interruptible transportation service, and all OCS pipelines having such certificates must provide open and nondiscriminatory access for both owner and nonowner shippers.

III. Discussion

Subpart K is a comprehensive regulatory scheme that supersedes the specialized provisions of subpart H. The certificate application process in § 284.244 of subpart H, for instance, has been rendered irrelevant by the blanket transportation certificates issued to all jurisdictional OCS pipelines in subpart K. Similarly, the definitions, statement of policy, and terms and conditions enunciated and adopted in subpart H have been superseded by the policies and regulatory procedures established in Order Nos. 509 and 509–A. Subpart H was designed to assist LDCs in obtaining transportation of their system supply gas from the OCS. The blanket transportation certificates issued in subpart K provide comprehensive certificate authority to transport the LDCs' OCS gas, and go well beyond subpart H by requiring those OCS pipelines to transport that gas on a nondiscriminatory basis. See the discussion in Order No. 509–A: [11]

> * * * the goals of section 603 and Order No. 92 are furthered by the requirements of Order No. 509. The blanket certificates issued by Order No. 509 will provide local distribution companies (LDCs) significant opportunities to obtain transportation of their gas.

As Order No. 509–A noted, section 603 of the OCSLAA mandated a policy statement by the Commission, and subpart H was adopted in implementation of that mandate. Subpart K implements that mandate more effectively and more comprehensively than subpart H, by putting in place a regulatory framework requiring nondiscriminatory transportation for all shippers on the OCS, including LDCs.

Accordingly, inasmuch as subpart H has been superseded by subpart K, and no longer serves a useful purpose, it will be deleted from the Commission's regulations.[12]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act [13] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission certifies that promulgating this rule does not represent a major Federal action having a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Information Collection

The Office of Management and Budget's (OMB) regulations [14] require that OMB approve certain information collection requirements imposed by agency rule. The Commission is notifying OMB of the information collection and recordkeeping requirements deleted by this rule.

VI. National Environmental Policy Act Statement

The Commission concludes that promulgating this rule does not represent a major Federal action having significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[15] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's

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[1] 18 CFR 284.241–284.246 (1989).

[2] 18 CFR 284.301–284.305 (1989).

[3] Statement of Policy on Distribution Access to Outer Continental Shelf Gas, Order No. 92, 45 FR 49,247 (July 24, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,173 (July 15, 1980); *reh'g denied*, 13 FERC ¶ 61,101 (Nov. 5, 1980).

[4] Public Law No. 95–372, *codified at* 43 U.S.C. 1801, 1862 (1982).

[5] 45 FR 49,247 (July 24, 1980); FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,173 (July 15, 1980), *reh'g denied*, 13 FERC ¶ 61,101 (Nov. 5, 1980).

[6] 15 U.S.C. 717f(c) (1988).

[7] 15 U.S.C. 3371(a) (1988).

[8] 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, 53 FR 50,925 (Dec. 19, 1988), III FERC Stats. & Regs. ¶ 30,842 (Dec. 9, 1988).

[9] 54 FR 8301 (Feb. 28, 1989), III FERC Stats. & Regs. ¶ 30,848 (Feb. 21, 1989).

[10] As discussed in Order Nos. 509 and 509–A, subpart K implements section 5 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1334 (1982).

[11] [cite] [slip opinion at 56].

[12] To the extent subpart H certificates have been issued, they will continue in effect pursuant to their terms.

[13] 5 U.S.C. 601–612 (1988).

[14] 5 CFR part 1320 (1989).

[15] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

regulations.[16] Consequently, neither an environmental impact statement nor an environmental assessment are required.

VII. Administrative Findings and Effective Date

This rule does not alter the substantive rights or interests of any interested persons, and it conforms the regulations to Commission practice. Therefore, prior notice and comment under section 4 of the Administrative Procedure Act (APA) [17] are unnecessary. Since the purpose of this final rule is to delete certain regulations that are no longer pertinent, the Commission finds good cause to make this rule effective immediately upon issuance. This rule therefore is effective March 23, 1990.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping.

In consideration of the foregoing, the Commission amends part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1988), as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988); Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356 (1982) as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 284.7 [Amended]

2. In § 284.7, paragraph (a), the words "subparts B, G and H" are removed and the words "subparts B and G" are inserted in their place.

§ 284.7 [Amended]

3. In § 284.7, paragraph (b)(1), the words "subpart B, G or H" are removed and the words "subpart B or G" are inserted in their place.

§ 284.8 [Amended]

4. In § 284.8, paragraph (a)(1), the words "subpart B, G or H" are removed and the words "subpart B or G" are inserted in their place.

§ 284.8 [Amended]

5. In § 284.8, paragraphs (b), (d) and (e) the words "subpart B, C, G or H" are removed and the words "subpart B, C or G" are inserted in their place.

§ 284.9 [Amended]

6. In § 284.9, paragraph (a)(1), the words "subpart B, G or H" are removed and the words "subpart B or G" are inserted in their place.

§ 284.9 [Amended]

7. In § 284.9, paragraph (b) and (e), the words "subpart B, C, G or H" are removed and the words "subpart B, C or G" are inserted in their place.

§ 284.11 [Amended]

8. In § 284.11, the words "subparts B, C and H" are removed and the words "subparts B and C" are inserted in their place.

§ 284.13 [Amended]

9. In § 284.13, paragraph (a) introductory text, the words "subparts B, G, or H" are removed and the words "subpart B or G" are inserted in their place.

§§ 284.241, 284.242, 284.243, 284.244, 284.245, 284.246 [Removed]

10. Subpart H, §§ 284.241 through 284.246, are removed in their entirety.

§ 284.262 [Amended]

11. In § 284.262, paragraph (a)(2), the words "subpart B, C, G or H" are removed and the words "subpart B, C or G" are inserted in their place.

[FR Doc. 90–7417 Filed 3–30–90; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 381

[Docket No. RM90–2–000]

Revision of Formula for Determining Filing Fees; Interim Rule

Issued March 23, 1990

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interim rule; request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting an interim rule revising the formula for determining the annual adjustment of filing fees in § 381.104 of the regulations. Under the revised formula, the Commission will average the three previous fiscal years' data to determine the annual filing fee for a fee category. In addition, the Commission is seeking comments on the interim rule's changes. After reviewing the submitted comments, the Commission intends to issue a final rule, no later than 120 days after the date of issuance of this interim rule.

DATES: The interim rule is effective March 23, 1990. An original and 14 copies of the written comments on this interim rule must be filed with the Commission by May 2, 1990.

ADDRESSES: All filings should refer to Docket No. RM90–2–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

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 Hearing Room A at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357–8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Hearing Room A, 825 North Capitol Street, NE., Washington, DC 20426.

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

ORDER NO. 521

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting this interim rule revising the formula for determining the annual adjustment of filing fees in § 381.104 of the regulations. Under the revised formula, the Commission will average the three previous fiscal years' data to determine the annual filing fee for a fee category. The Commission is amending its regulations in this interim rule while, at

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[16] 18 CFR 380.4(a)(2)(ii) (1989).

[17] 5 U.S.C. 553(b) (1988).

the same time, seeking comments on its changes. After reviewing the comments submitted on the action taken in this rulemaking docket, the Commission intends to issue a final rule, no later than 120 days after the date of issuance of this interim rule.

II. Background and Discussion

The Commission is authorized under the Independent Offices Appropriations Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[1] In addition, the Omnibus Budget Reconciliation Act of 1986 authorizes the Commission to "assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year." [2]

The Commission's present fees schedule was established in a series of rulemaking proceedings from 1984 through 1989.[3] Each fiscal year the Commission updates its fees according to the formula in § 381.104(c), which states: "The formula for determining each fee is the actual work-months dedicated to a given fee category for the previous fiscal year divided by the number of actual completions in the previous fiscal year multiplied by the average cost per work-month in the previous fiscal year." [4]

In Order No. 361 the Commission viewed "numbers of completions" as the best and most current data on the workload of the Commission, and as a reasonable barometer of Where the Commission is spending its resources. At the same time it recognized that an unusually low or high number of completions in any given year could raise or lower the fee in the succeeding year, and that as a result the application of other statistical techniques might be more appropriate than the present formula for establishing fees at a reasonable level. [5] Using the formula prescribed in § 381.104(c) to determine the fiscal year 1990 filing fees based on 1989 fiscal year data would establish filing fees for certain categories that are out of line with the purposes underlying the fee program.

The problem of wide fluctuations in fees arises when the workmonths and completions fluctuate, and when the number of filings is comparatively small. To produce fees, the workmonths/completions ratios are multiplied by the average employee cost. It is the fluctuation of these ratios that causes variations in fees; the average employee costs change at a fairly modest and steady rate.

In fee categories wherein relatively few filings are made, the completion of one or two cases in September of one fiscal year instead of in October of the next fiscal year may (as a percentage) significantly affect the total completions count, thereby significantly affecting the workmonths/completions ratio and the resulting fee. Similarly, one or two particularly complex filings, that involve unusually substantial workmonths to analyze and process, will have a much greater impact on the average filing fee for that category if the total number of filings in that category is relatively small; there will be fewer filings over which to average the atypical workmonths.

The Commission believes that the breadth of the fluctuations can be reduced considerably by using a wider data base for calculations, so as to have the bases overlap each year. For example, the calculation of 1990 fees would use workmonths and completions from 1987, 1988, and 1989, rather than only from 1989. Similarly, the calculation of 1991 fees would use workmonths and completions from 1988, 1989, 1990, rather than only from 1990. Where three years' data is unavailable due to changes in fee parameters or for any other reason, calculations would use the maximum data available. The average employee cost also would be calculated using data from the three previous years, in order to have the base for cost equal the base for workmonths and completions.

The Commission, therefore, is revising § 381.104(c) of its regulations to permit averaging the three previous fiscal years' data to determine the annual filing fee for a fee category. For those fee categories where data is not available for three previous years, the Commission will use the data for the longest period available to determine the filing fee.

The Commission is amending its regulations in an interim rule while, at the same time, seeking comments on these changes. The Commission believes that this action must be taken before the 1990 filing fees are published in order to avoid imposition of some unfair or inequitable filing fees. After reviewing the comments submitted on the action taken in this rulemaking docket, the Commission will issue a final rule.

III. Administrative Findings and Effective Date

The Commission is adopting a rule prior to providing a notice and obtaining comments, as generally required by the Administrative Procedure Act (APA) for any rulemaking proceeding.[6] The Commission is invoking exceptions to this requirement to provide an immediate remedy to certain proposed 1990 filing fees that would otherwise be unfair or inequitable. The Commission is making a special effort to implement this interim rule promptly in order to minimize the impact of the proposed 1990 filing fees and to provide some measure of certainty about these filing fees.

The Commission, therefore, finds good cause to issue this rule without prior notice and comment. The Commission believes the public interest is best served in this instance with the promulgation of an interim rule. However, the Commission intends to issue a final rule no later than 120 days after the date of issuance of this interim rule.

This interim rule is effective March 23, 1990.[7]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [8] generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities.

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[1] 31 U.S.C. 483(a) (1982).

[2] Public Law 99-509, Title III, subtitle E, section 3401 (1986).

[3] *See* Order No. 360, 49 FR 5074 (Feb. 10, 1984), FERC Stats. & Regs. (Regulations Preambles 1982-1985) ¶ 30,542 (Feb. 6, 1984); Order No. 361, 49 FR 5083 (Feb. 10, 1984), FERC Stats. & Regs. (Regulations Preambles 1982-1985) ¶ 30,543 (Feb. 6, 1984); Order No. 395, 49 FR 35,348 (Sept. 7, 1984), FERC Stats. & Regs. (Regulations Preambles 1982-1985) ¶ 30,609 (Oct. 31, 1984); Order No. 433, 50 FR 40,332 (Oct. 3, 1985), FERC Stats. & Regs. (Regulations Preambles 1982-1985) ¶ 30,662 (Oct. 3, 1985); Order No. 435, 50 FR 40,347 (Oct. 3, 1985), FERC Stats. & Regs. (Regulations Preambles 1982-1985) ¶ 30,663 (Sept. 30, 1985).

[4] Under the formula, the workmonths reported for a class of docketed activity are added to that class's pro-rata share of the workmonths reported for relevant support activities. This figure, representing the total number of workmonths dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average amount of time required to complete one proceeding in that given class of docketed activity. Next, the average cost of a workmonth is calculated based on the Commission's fiscal year actual costs. Then, in order to determine the fee for a given class of activity, the average cost per workmonth is multiplied by the average amount of time, measured in workmonths, required to complete one proceeding in that class.

[5] *See* FERC Stats. & Regs. ¶ 30,543 at 30,876-887 (Feb. 6, 1984).

[6] 5 U.S.C. 553 (b) and (c) (1988).

[7] Pursuant to § 381.104(a), the Executive Director updates the filing fees each fiscal year and publishes these fees in the **Federal Register**. This formula will be applied to the next update of the filing fees, scheduled to be issued this spring. Thus, this interim rule does not affect the filing fees that are in effect on the date of issuance of the rule.

[8] 5 U.S.C. 601-612 (1988).

The revised fees adopted in the rule may have a significant impact on a substantial number of small entities. In effect, the Commission's rule will lessen the economic impact of certain filing fees that would otherwise fluctuate too high. The revised formula will permit a more modest increase or even a decrease in the fees that will be more equitable for all the filing fees. The Commission believes, therefore, this rule will have in the aggregate a beneficial impact on small entities rather than a negative impact. The Commission concludes, therefore, that this impact will not be "significant" within the meaning of the RFA. Accordingly, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities".

V. Environmental Statement

The Commission concludes that promulgating this rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[9] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment are required.[10]

VI. Public Comment Procedures

Interested persons are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should refer to Docket No. RM90–2–000 on the outside of the envelope and on all documents submitted to the Commission. Fourteen copies should be submitted with the original.

Comments must be filed on or before May 2, 1990. Copies of the written comments may be obtained from the Commission's Division of Public Information, Hearing Room A, 825 North Capitol Street, NE., Washington, DC 20426. Comments are available for public inspection during business hours at the same location. Copies of comments will be available for purchase.

[9] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[10] See 18 CFR 380.4(a)(1) (1989).

List of Subjects in 18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 381, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 381—FEES

1. The authority citation for part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1988); Federal Power Act, 16 U.S.C. 791–828c (1988); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1988); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, Title III, subtitle E, section 3401 (October 21, 1986).

2. In § 381.104, paraqraph (c) is revised to read as follows:

§ 381.104 Annual adjustment of fees.

* * * * *

(c) *Formula.* (1) The formula for determining each fee is the actual workmonths dedicated to a given fee category for the three previous fiscal years divided by the number of actual completions in the three previous fiscal years multiplied by the average cost per workmonth in the three previous fiscal years. The fee is rounded down to the nearest $5 increment if the fee is $100 or less, and to the nearest $10 increment if the fee is more than $100.

(2) When data is not available to permit the three year averaging provided in paragraph (c)(1) of this section, the formula for determining the fee will use the data for the longest period available.

[FR Doc. 90–7416 Filed 03–30–90; 8:45am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74, 173, and 178

[Docket No. 90N–0076]

Food for Human Consumption; Food and Color Additives; Technical Amendments

AGENCY: Food and Drug Administration HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive and food additive regulations to correct certain typographical and other inadvertent errors.

DATES: Effective April 2, 1990, except for 21 CFR part 74, which is effective May 2, 1990; written objections and requests for a hearing by May 2, 1990.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: FDA has discovered that certain errors have become incorporated into the agency's codified regulations on color additives and food additives. FDA is correcting these errors. These corrections are nonsubstantive. The following errors in the regulations are addressed in this document:

1. 21 CFR 74.1602 *D&C Violet No. 2.* In an amendment to § 74.1602 published on September 23, 1980 (45 FR 62978), the word "polyglactin" in paragraph (c)(2)(i) was inadvertently misspelled. The agency is correcting the spelling.

2. 21 CFR 173.310 *Boiler water additives.* In a document published on December 3, 1985 (50 FR 49535), the agency revised and corrected the Chemical Abstracts Service Registry Numbers (CAS Reg. Nos.) for several compounds in the agency's regulations. At that time, the agency changed the CAS Registry Number for the sodium salt of polymaleic acid in paragraph (c) of § 173.310 from 70247–90–4 (2,5-Furandione, homopolymer, hydrolyzed, sodium salts) to 30915–61–8 (2-Butenedioic acid (Z-), homopolymer, sodium salt), because the agency found all references to the sodium salt of polymaleic acid listed under the CAS Reg. No. 30915–61–8. The agency has since learned that both CAS Registry Numbers refer to sodium salts of polymaleic acid, synthesized using either maleic anhydride (CAS Reg. No. 70247–90–4) or maleic acid (CAS Reg. No. 30915–61–8) as the starting material. In changing the CAS Registry Number, the agency did not intend to imply that the manufacturing process described by the original CAS Registry Number was no longer permitted. The agency finds

that the substance identified in this section of the regulations is correctly described by either CAS Registry Number. Therefore, the agency is revising the regulation to include both CAS Registry Numbers.

3. 21 CFR 173.357 *Materials used as fixing agents in the immobilization of enzyme preparations.* The entry in the table in paragraph (a)(2) of § 173.357 identified by the CAS Reg. No. 68130–97–2 and described as "the reaction product of homopolymerization of ethylenimine in aqueous hydrochloric acid at 100 °C and of cross-linking with 1,2-dichloroethane" was incorrectly listed as "Polyethylenimine" on October 22, 1987 (52 FR 39508). The substance identified by this CAS Registry Number and this description is more accurately named as "Polyethylenimine reaction product with 1,2-dichloroethane." The agency is therefore changing the name of this entry in the table. This action has no effect on the identity of the substance regulated.

4. 21 CFR 178.3700 *Petrolatum.* Paragraph (d) of § 178.3700 cross-references other sections of the regulations that prescribe uses of petrolatum. When this section was recodified on March 15, 1977 (42 FR 14302), these cross-references were incorporated incompletely. Correcting these cross-references has no substantive effect on the regulation. In addition, the word "or" was inadvertently omitted from paragraph (a) of § 178.3700 in the printing of the Code of Federal Regulations in 1977. Replacing this word restores the correct language, as published in the Federal Register.

Publication of this document constitutes final action on these changes under the Administrative Procedures Act (5 U.S.C. 553). Notice and public procedure on these corrections is unnecessary because FDA is merely remedying nonsubstantive errors.

Any person who will be adversely affected by these revisions may at any time on or before May 2, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 74

Color additives, Cosmetics, Drugs.

21 CFR Part 173

Food additives.

21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 74, 173, and 178 are amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 376).

§ 74.1602 [Amended]

2. Section 74.1602 *D&C Violet No. 2* is amended in paragraph (c)(2)(i) by removing "polygalactin" and replacing it with "polyglactin".

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

3. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: Secs. 201, 402, 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348).

§ 173.310 [Amended]

4. Section 173.310 *Boiler water additives* is amended in paragraph (c) in the entry for "Polymaleic acid" in the table under the heading "Substances" by removing "[CAS Reg. No. 30915–61–8]" and replacing it with "[CAS Reg. No. 30915–61–8 or CAS Reg. No. 70247–90–4]".

§ 173.357 [Amended]

5. Section 173.357 *Materials used as fixing agents in the immobilization of enzyme preparations* is amended in paragraph (a)(2) by revising the entry for "Polyethylenimine" in the table under the heading "Substances" to read "Polyethylenimine reaction product with 1,2-dichloroethane".

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

6. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

§ 178.3700 [Amended]

7. Section 178.3700 *Petrolatum* is amended in paragraph (a) by revising "white petrolatum in" to read "white petrolatum or in", and in paragraph (d) by removing "§§ 175.105, 175, 176, 177, and 178 of this chapter 177.2600, and 177.2800 of this chapter and § 178.3570" and replacing it with "§§ 175.105, 175.125, 175.300, 176.170, 176.200, 176.210, 177.2600, 177.2800, and 178.3570 of this chapter".

Dated: March 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90–7440 Filed 3–30–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Removal From List of Specially Designated Nationals (Cuba)

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice of removal from the list of Specially Designated Nationals (Cuba).

SUMMARY: This notice provides the name of a firm which has been removed from the list of Specially Designated Nationals under the Treasury Department's Cuban Assets Control Regulations (31 CFR part 515).

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376–0400. Copies of

the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Panamanian company, Atlantic Pacific, S.A. (APSA), was listed in the Federal Register as a Specially Designated National (Cuba) on October 31, 1989 (54 FR 45730), pursuant to the Cuban Assets Control Regulations (31 CFR part 515). It has been determined that Atlantic Pacific, S.A. (APSA) no longer comes within the scope of the definition of a "specially designated national" of Cuba as defined in § 515.306 of the Regulations; and, therefore, it is removed from the list of Specially Designated Nationals.

Specially Designated Nationals of Cuba, Removal

The list of Specially Designated Nationals, December 10, 1986 (51 FR 44459), as amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446), March 7, 1989 (54 FR 9431), April 10, 1989 (54 FR 32064), September 20, 1989 (54 FR 38810), October 31, 1989 (54 FR 45730), November 29, 1989 (54 FR 49258) and January 26, 1990 (55 FR 2644), is amended by removing the name: Atlantic Pacific, S.A. (APSA), Panama.

Dated: March 8, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 13, 1990.

Peter K. Nunez,

Assistant Secretary, (Enforcement).

[FR Doc. 90-7461 Filed 3-28-90; 11:53 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 752

Admiralty Claims Provisions

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its Admiralty Claims Regulations. This revision reflects changes by the Secretary of the Navy to the delegation of authority to compromise and settle admiralty claims, and correction of statutory citations and other matters, and is intended to update and clarify these agency procedural rules for better understanding by the public.

EFFECTIVE DATE: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Part 752 of chapter VI, title 32 of the Code of Federal Regulations is being amended to update and clarify Department of the Navy (DON) admiralty claims procedures. This regulation involves an established body of technical regulations.

Routine amendments are necessary to keep them operationally current. Since this regulation contains only minor technical amendments to DON claims procedures, notice and public comment under 5 U.S.C. 533(b) are unnecessary.

The Department of the Navy has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), is not subject to the relevant provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), and does not contain reporting or record keeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 752

Administrative practice and procedure.

PART 752—[AMENDED]

Accordingly, 32 CFR part 752 is amended as follows:

1. The authority citation for 32 CFR part 752 is revised to read:

Authority: 5 U.S.C. 301; 10 U.S.C. 5013, 5148, and 7621-7623; 32 CFR 700.206 and 700-1202.

2. The Note immediately preceding § 752.1 is removed.

§ 752.2 [Amended]

3. Paragraphs (a) and (b) of § 752.2 are revised to read:

* * * * *

(a) *Administrative authority of the Secretary of the Navy.* The Secretary of the Navy has administrative authority for settlement and direct payment where the amount paid does not exceed $1,000,000 and where the matter is not in litigation, of claims for damage caused by naval vessels or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy, and for towage or salvage services rendered to naval vessels (10 U.S.C. 7622 (1982)). The Secretary also has authority to settle affirmative admiralty claims for damage caused by a vessel or floating object to property under the jurisdiction of the Navy (10 U.S.C. 7623 (1982)).

(b) *Admiralty Division of the Office of the Judge Advocate General.* The Navy's admiralty-tort claims are processed and adjudicated in the Admiralty Division of the Office of the Judge Advocate General. All correspondence with the Admiralty Division should be addressed to the Office of the Judge Advocate General (Code 31), Navy Department, 200 Stovall Street, Alexandria, Virginia 22332-2400.

* * * * *

§ 752.3 [Amended]

4. Paragraphs (a) and (c) of § 752.3 are revised to read:

* * * * *

(a) *Settlement authority.* 10 U.S.C. 7622 (1982) provides settlement authority for "(1) Damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; (2) compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or (3) damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy." The limit on the Secretary's settlement authority is payment of $1,000,000. A claim which is settled for an amount over $1,000,000 is certified to Congress for payment. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $100,000. Under the Secretary's delegation, settlements not exceeding $100,000 may be effected by the Judge Advocate General, Deputy Judge Advocate General, Assistant Judge Advocate General (General Law), and the Deputy Assistant Judge Advocate General (Admiralty). Authority has also been delegated to Deputy Commander in Chief, U.S. Naval Forces, Europe, and to Commander Sixth Fleet, to pay admiralty claims against the Navy not exceeding $10,000, and to Commander Fleet Air, Caribbean, for damage to fishing equipment arising in Culebra-Vieques waters, not to exceed $3,000.

* * * * *

(c) *Settlement procedures.* Where the amount paid is over $100,000, after agreement is reached with counsel or claimants, the procedure is to prepare a settlement recommendation for the approval of the Secretary of the Navy. When settlement has been approved,

the voucher required for effecting payment is prepared.

The settlement check is then exchanged, in keeping with the commercial practice, for an executed release. In some situations, where the exchange of documents is impracticable, a claimant is requested to forward the executed release by mail, on the understanding that the release does not become effective until the check is received in payment. Claims settled under 10 U.S.C. 7622 are paid out of annual Department of Defense appropriations.

* * * * *

§ 752.4 [Amended]

5. Paragraphs (a) and (c) of § 752.4 are revised to read:

* * * * *

(a) *Settlement authority.* The Navy has the same authority to settle affirmative admiralty claims as it does claims against the Navy. The statute conferring this authorization is codified in 10 U.S.C. 7623 (1982), and is the reciprocal of 10 U.S.C. 7622 (1982) referred to in § 752.3.

* * * * *

(c) *Statute of limitation.* The United States is subject to a three-year statute of limitation when it asserts an affirmative claim for money damages grounded in tort. This limitation is subject to the usual exclusions, such as inability to prosecute due to war, unavailability of the "res" or defendant, and certain exemptions from legal process (28 U.S.C. 2415, 2416 (1982)).

* * * * *

§ 752.5 [Amended]

6. Paragraph (b) of § 752.5 is revised to read:

* * * * *

(b) *Affirmative claims.* Authorization for the settlement of affirmative salvage claims is contained in 10 U.S.C. 7365 (1982). Assertion of such claims is handled in the first instance by the Assistant Supervisor of Salvage (Admiralty), USN, Naval Sea Systems Command (SEA OOCL), Washington, DC 20362–5101. Salvage claims are referred to the Admiralty Division only if the Assistant Supervisor of Salvage (Admiralty) is unsuccessful in making collection. Any money received in settlement of affirmative salvage claims is credited to appropriations for maintaining salvage facilities by the Navy, pursuant to 10 U.S.C. 7367 (1982).

Dated: March 23, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–7438 Filed 3–30–90; 8:45am]

BILLING CODE 3810–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803, 1806, 1807, 1819, 1822, 1825, 1837, 1839, 1842, 1845, and 1852

RIN 2700–AA87, 2700–AA92

[NASA FAR Supplement Directive 89–3.]

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect the final version of an interim rule and to accommodate a number of miscellaneous changes implementing higher level issuances and other changes dealing with NASA internal or administrative matters.

EFFECTIVE DATE: March 31, 1990.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Chief, Regulations Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8923.

SUPPLEMENTARY INFORMATION:

Background

The major changes involve: (1) The limitation on the payment of funds to influence Federal transactions; (2) acquisition forecasting; (3) Trade Agreements Act Threshold; (4) Advisory and Assistance Services; and (5) delegation of procurement authority procedures. Subpart 18–25.71 was originally published as an interim rule on April 27, 1989 (54 FR 18112), with a correction May 8, 1989 (54 FR 19576). The only substantive public comment received was accommodated in the May 8, 1989, correction. The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulation imposes no burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1801, 1803, 1806, 1807, 1819, 1822, 1825, 1837, 1839, 1842, 1845, and 1852

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1803, 1806, 1807, 1819, 1822, 1825, 1837, 1839, 1842, 1845, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2.–3. Section 1803.602 is revised to read as follows:

1803.602 Exceptions.

The Administrator has delegated to the Assistant Administrator for Procurement authority to authorize an exception to the policy in FAR 3.601 (see NMI 5101.8, Delegation of Authority—To Take Actions in Procurement and Related Matters (Assistant Administrator for Procurement)). The Assistant Administrator for Procurement hereby redelegates this authority to a head of contracting activity (HCA) for individual actions in the aggregate of $100,000 and below, inclusive of follow-on procurements, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Assistant Administrator for Procurement (Code HS) for approval.

4. Subpart 1803.8 is added to read as follows:

Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.
1803.806 Processing suspected violations.

Subpart 1803.8—Limitation on the Payment of Funds To Influence Federal Transactions.

1803.804 Policy.

(a) The Headquarters Procurement Management Division (Code HM) is responsible for collecting and compiling contractors' disclosures and for preparing the report for submission to Congress.

(b) Procurement officers shall forward one copy of each Disclosure of Lobbying Activities Form furnished pursuant to FAR 3.803 to Code HM. The original shall be retained in the contract file. Forms shall be submitted quarterly by the 15th of the month following the end of the quarter.

1803.806 Processing suspected violations.

The Assistant Administrator for Procurement (Code HP) is the designated official to whom suspected violations of the Act shall be referred.

PART 1806—COMPETITION REQUIREMENTS

1806.304–70 [Removed]

5. Section 1806.304–70 is removed.

PART 1807—ACQUISITION PLANNING

1807.7103–1 [Amended]

6. Section 1807.7103–1(a) is revised to read as follows:

(a) Prior to July 15th of every year, each installation shall submit to the Assistant Administrator for Procurement (Code HS) a Master Buy Plan (original and eight copies) for the next fiscal year, listing in it every known procurement that (1) meets the criteria in 1807.7102, (2) is expected to be initiated in that fiscal year, and (3) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. The plan shall include any phased procurement whose overall value exceeds the dollar threshold in 1807.7102, even if the value of the initial phase is below the threshold. Initial phase for all procurements is considered to be Phase B or its equivalent.

* * * * *

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. Subpart 1819.8 is amended as set forth below:

1819.801, 1819.803, 1819.808, 1819.809, and 1819.809–1 [Removed]

a. Sections 1819.801, 1819.803, 1819.808, 1819.809, and 1819.809–1 are removed.

b. The heading and text of section 1819.804 is revised to read as follows:

1819.804 Evaluation, offering, and acceptance.

The Small Business Specialist shall review and evaluate all procurement requirements to determine their suitability for offering to SBA for 8(a) acceptance and make a recommendation to the contracting officer concerning award to SBA.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1822.804, 1822.805 and 1822.805–70 [Removed]

8. Sections 1822.804, 1822.805 and 1822.805–70 are removed.

8A. Subpart 1822.8 is revised to read as follows:

1822.804–2 Construction.

Each procurement office will maintain and furnish to contracting officers the listing required by FAR 22.804–2(b). The Assistant Administrator for Procurement (Code HP) will furnish the listing to be maintained. The current listing is 45 FR 65979 "Goals for Minority Participation in the Construction Industry" (October 3, 1980).

1822.807 Exemptions.

Requests for exemption pursuant to FAR 22.807(a)(1) shall be forwarded to the Administrator through the Headquarters Procurement Policy Division (Code HP), which shall obtain concurrence from appropriate Officials-in-Charge. Requests shall be accompanied by detailed written justification and the proposed exemption request for signature.

1822.870 Reports and other required information.

(a) If an offeror completes a negative representation pursuant to FAR 52.222–22, the contracting officer shall obtain the contractor's initial report within 30 days of contract award and retain it in the contract file. Such a report by the prime or subcontractor is required by 41 CFR 60–1.7 and FAR 22.8.

(b) If requested by a contractor or subcontractor, any reports filed with the contracting officer shall be held in confidence as privileged information in accordance with 32 CFR 286.6(b)(4). All reports required by 1822.870(a) may be used only for the administration of Executive Order 11246, the Civil Rights Act of 1964, or in furtherance of the Act or Executive Order.

PART 1825—FOREIGN ACQUISITION

9. Section 1825.108 is added to read as follows:

1825.108 Excepted articles, materials, and supplies.

NASA has determined that the end products listed at FAR 25.108(d) shall be treated as domestic.

1825.402 [Amended]

10. In section 1825.402, the amount "$156,000" is changed to "$172,000."

11. Subpart 1825.71 is revised to read as follows:

Subpart 1825.71—NASA Domestic Preference

1825.7100 Scope of subpart.
1825.7101 Definitions.
1825.7102 Policy.
1825.7103 Procedures.
1825.7104 Determination by United States Trade Representative.
1825.7105 Solicitation provision and contract clause.

Subpart 1825.71—NASA Domestic Preference

1825.7100. Scope of subpart.

This subpart implements sec. 209 of Pub. L. 100–685, the National Aeronautics and Space Administration Authorization Act of 1989 and applies only to solicitations and contracts which are more than 50% funded with Fiscal Year 1989 funds.

1825.7101 Definitions.

Code country, as used in this subpart, means a country that is a signatory to the Agreement on Government Procurement (the "Procurement Code"). The Code countries are Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Hong Kong, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Singapore, Sweden, Switzerland, and United Kingdom.

Code country end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Code country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include

service contracts as such (see FAR 25.401).

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Domestic firm, as used in this subpart, means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

Domestic product, as used in this subpart, means the final manufactured end product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

Foreign firm, as used in this subpart, means a business entity other than a domestic firm.

Procurement code, as used in this subpart, means the Agreement on Government Procurement (see FAR 25.400).

1825.7102 Policy.

(a) When the use of competitive procedures to buy an end product (see FAR 6.1 and 6.2) results in an apparent award of a contract to a foreign firm, the contracting officer shall award the contract to a domestic firm offering a domestic product if the domestic offer does not exceed the foreign offer by more than six percent.

(b) Paragraph (a) of this section does not apply if—

(1) Such applicability would not be in the public interest;

(2) Compelling national security considerations require otherwise; or

(3) The United States Trade Representative determines that such an award would be in violation of the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party. Examples of such international agreements are the Procurement Code, the U.S.-Canada Free Trade Agreement, and the U.S.-Israel Free Trade Agreement.

1825.7103 Procedures.

(a) The NASA domestic preference procedure is to be applied when the use of competitive procedures, including any other domestic preference program or exception thereto, indicates award is to be made to a foreign firm.

(b) The contracting officer shall award the contract to that domestic firm offering a domestic product whose price does not exceed the price of the low foreign firm by more than six percent, unless the contracting officer has documented the file to indicate that one or more of the conditions at 1825.7102(b) applies.

1825.7104 Determination by United States Trade Representative.

The United States Trade Representative has determined that when NASA is procuring supply-type products, application of the domestic preference established by section 209 of the National Aeronautics and Space Administration Authorization Act of 1989 would violate the General Agreement on Tariffs and Trade, and certain international agreements to which the United States is a party, when the following conditions exist:

(a) NASA is using competitive procurement procedures; and

(b) NASA receives one or more offers from foreign firms to supply—

(1) A Code country end product at a price above the Trade Agreements Act threshold;

(2) A Canadian end product (see FAR 25.401) at a price above $25,000 and below the Trade Agreements Act threshold; or

(3) An Israeli end product at a price above $50,000.

1825.7105 Solicitation provision and contract clause.

The contracting officer shall insert the provision at 1852.225–74, NASA Domestic Preference Certificate, and the clause at 1852.225–75, NASA Domestic Preference, in all competitive solicitations and contracts for supplies which are more than 50% funded with Fiscal Year 1989 funds.

PART 1837—SERVICE CONTRACTING

Subpart 1837.2—[Amended]

12. Subpart 1837.2 is revised to read as follows:

Subpart 1837.2—Advisory and Assistance Services

1837.200 Scope of subpart.
1837.202 Policy.
1837.202–70 NASA policy.
1837.202–71 Public inspection.
1837.205 Management controls.
1837.205–70 Requests for approval.
1837.205–71 Negotiation of contracts.

Subpart 1837.2—Advisory and Assistance Services

1837.200 Scope of subpart.

This subpart implements and supplements FAR subpart 37.2 and NMI 5104.5, Guidelines for the Use of Advisory and Assistance Services Obtained by Contract, and establishes procedures to be followed in contracting for advisory and assistance services.

1837.202 Policy.

1837.202–70 NASA policy.

In addition to the prohibitions regarding advisory and assistance services listed at FAR 37.202(c)—

(a) Contracts for advisory and assistance services shall not be continued longer than five years;

(b) Advisory and assistance services of individual experts and consultants shall normally be obtained by appointment rather than by contract (see NMI 3304.1, Employment of Experts and Consultants);

(c) Task orders for advisory and assistance services issued under the prime contract between the California Institute of Technology and NASA for the operation of the JPL facility must be reviewed and approved in accordance with this subpart 1837.2; and

(d) Persons or organizations providing advisory and assistance services to NASA must be free from conflict of interest as delineated in FAR subpart 9.5, Organizational Conflicts of Interest, and NFS subpart 1809.5. When considering advisory and assistance service arrangements with former Government employees, compliance with NFS 1803.7001 and 18 U.S.C. 207 is required.

1837.202–71 Public inspection.

(a) NASA's annual Appropriations Act states: "Except as otherwise provided under existing law or under an existing Executive Order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within twenty-four months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract."

(b) In accordance with paragraph (a) of this section, on a quarterly basis the Office of Procurement (Code HM) prepares a list for public inspection and distributes it to NASA Information Centers pursuant to NMI 1382.2 (14 CFR 1206), Availability of Agency Records to Members of the Public.

(c) Public inspection of advisory and assistance service contracts and purchase orders at NASA field

installations in accordance with the Appropriations Act shall be limited to basic contract documents and modifications. Requests for copies of contracts or other data will be handled in accordance with NMI 1382.2.

1837.205 Management controls.

The contracting officer shall include a copy of the contracting officer's technical representative's report, required by NMI 5104.5, subparagraph 6.d, in each contract or purchase order file.

1837.205-70 Requests for approval.

(a) When a NASA field installation or headquarters office considers advisory and assistance services necessary and desirable, in accordance with the policy in FAR 37.202 and 1837.202-70, the requiring activity is responsible for preparing the documentation required by NMI 5104.5 and securing the prior approval of the Associate Administrator for Management (Code N).

(b) Before processing any procurement action for advisory and assistance services, the contracting officer shall provide advice, as necessary, to the requiring activity on preparing the documentation required by NMI 5104.5 and ensure that this required documentation, including the necessary concurrences/approvals, is included in the official contract or purchase order file. For any proposed requirement, regardless of dollar value, where there is uncertainty as to whether the requirement is for advisory and assistance services, the contracting officer shall make a determination. For those requirements determined to be for advisory and assistance services which have not been approved by the Associate Administrator for Management (Code N), the contracting officer shall return the procurement request to the originating office for action in accordance with NMI 5104.5. In all such cases, the contracting officer's determination is final.

1837.205-71 Negotiation of contracts.

(a) Contracting Officers shall include in all solicitations for advisory and assistance services a requirement that each offeror furnish the following information with the proposal, regardless of the pricing arrangements anticipated:

(1) The names and qualifications of principal members of the contractor organization who will be responsible for the project.

(2) The title of each official and the number of employees who will participate.

(3) The estimated number of hours that each official and employee will contribute to the proposed project.

(4) The standard billing rate per hour for each official and employee.

(b) In addition, the solicitation and the resulting contract shall require that—

(1) The contractor warrants that the rates quoted are not in excess of those charged nongovernmental clients for the same services performed by the same individuals;

(2) The Government has the right to the working papers used by the participating officials and employees of the firm or organization in connection with the project;

(3) Publication or distribution of the study, data, or related material is prohibited, except to the extent authorized by the contracting officer; and

(4) The contractor agrees that any reports regarding organizational matters (as required by the contract) shall include, when feasible and in addition to the recommendations, alternative methods to be considered and the pros and cons of each alternative.

PART 1839—ACQUISITION OF INFORMATION RESOURCES

13. Subpart 1839.70 is amended as set forth below:

a. Section 1839.7001 is revised to read as follows:

1839.7001 Policy.

The Associate Administrator for Management, with the concurrence of the Assistant Administrator for Procurement, has responsibility for submitting agency procurement requests (APRs) to the GSA to obtain delegations of procurement authority (DPAs) for ADPE. Telecommunications services shall be obtained in accordance with NMI 2520.1, Communications System Management.

1839.7003-1 [Amended]

b. In section 1839.7003-1(d), "(Code HP)" is changed to "(Code HS) of".

* * * * *

1839.7003-2 [Amended]

c. In section 1839.7003-2(c)(5)(ii), "Code HP" is changed to "Code HS" and in 1839.7003-2(c)(7) "Code HP" is changed to read "NASA".

d. Section 1839.7003-3 is revised to read as follows:

1839.7003-3 Submission.

Forward two copies of requests for DPAs to the Assistant Administrator for Procurement (Attn: Code HS). Allow a minimum of nine weeks for processing.

1839.7004 [Amended]

e. In section 1839.7004, paragraph (a) is deleted; paragraph (b) is redesignated as (a) and amended by changing "Code NT" to "Code NTD"; and paragraph (c) is redesignated (b).

f. Sections 1839.7005 and 1839.7006 are revised to read as follows:

1839.7005 Coordination.

(a) Requests for DPAs are subject to general review, comparison with acquisition plans, and discussion between Codes HS and NTD before submission of an APR to GSA.

(b) Communications with GSA regarding APRs shall be through the Headquarters Information Resources Management Policy Division (Code NTD), unless that office directs otherwise. Installations may respond to contacts initiated by GSA, but should inform Code NTD of the contact and its nature.

(c) NASA will not normally make presentations to GSA regarding APRs unless requested by GSA. Any exceptions are subject to coordination by Codes HS and NTD.

1839.7006 DPA transmittal.

GSA's delegations of procurement authority to NASA are transmitted to the Associate Administrator for Management or designee (Code NTD), and are in turn sent to the appropriate procurement officer by transmitting the signed DPA with a cover letter containing additional instructions and guidance. Questions regarding the DPA shall be referred to Code NTD.

PART 1842—CONTRACT ADMINISTRATION

1842.102-70 [Amended]

14. In section 1842.102-70, the numbers (1) and (2) are removed.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.208-83 [Amended]

15. Section 1852.208-83 is amended as set forth below:

a. The citation "1808.002-76" is changed to read "1808.002-71."

b. In the clause, Acquisition of Helium, the date "DECEMBER 1988" is changed to "MARCH 1990".

c. Paragraph (a) of the clause is revised to read as follows:

(a) In accordance with 30 CFR parts 601 and 602, helium furnished under this contract (purchase order) shall be Department of the Interior, Bureau of Mines, helium or shall be replaced by the supplier with an equivalent volume

of helium purchased from the Bureau of Mines.

* * * * *

16. Section 1852.225–74 is revised to read as follows:

1852.225–74 NASA Domestic Preference Certificate.

As prescribed in 1825.7105, insert the following provision:

NASA Domestic Preference Certificate (April 1989)

(a) For purposes of this provision, the following definitions apply:

"Code country," as used in this subpart, means a country that is a signatory to the Agreement on Government Procurement (the "Procurement Code"). The Code countries are Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Hong Kong, Ireland, Israel, Italy, Japan, Luxembourg, Netherlands, Norway, Singapore, Sweden, Switzerland, and United Kingdom.

"Code country end product," as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of the Code country, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such (see FAR 25.401).

"Components," as used in this provision, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic firm," as used in this provision, means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

"Domestic product" means the final product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred.

"Foreign firm," as used in this provision, means a business entity other than a domestic firm.

"Foreign product," as used in this provision, means a product other than a domestic product.

(b) The offeror certifies that it is [ ] is not [ ] a domestic firm.

(c) The offeror certifies that (1) each final product, except those listed below, will be completely assembled in the United States and (2) when completely assembled, not less than 50 percent of the cost of all the components of the final product will be domestically incurred.

Foreign products (also specify if a product is a Code-country, Canadian, or Israeli end product):

(End of provision)

17. Section 1852.225–75 is revised to read as follows:

1852.225–75 NASA Domestic Preference.

As prescribed in 1825.7105, insert the following clause:

NASA Domestic Preference (April 1989)

(a) The NASA domestic preference (P.L. 100–147, 101 Stat. 866) provides that NASA give preference to domestically produced and assembled final products of domestic firms.

"Components," as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic firm" means a business entity that is organized under the laws of the United States and that conducts business operations in the United States.

"Foreign firm" means a business entity that is not a domestic firm.

(b) The contractor, if certified as a domestic firm, shall deliver only the final product of a domestic firm that will be completely assembled in the United States and of which, when completely assembled, not less than 50 percent of the cost of all the components will be domestically incurred. (End of clause)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB35

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the Mojave population of the desert tortoise (*Gopherus agassizii*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The Mojave population covered by this rule includes all tortoises north and west of the Colorado River in California, southern Nevada, southwestern Utah, and northwestern Arizona. Construction projects such as roads, housing developments, energy developments and conversion of native habitats to agriculture have destroyed habitat supporting tortoises in the Mojave population. Grazing and off-road-vehicle use have degraded additional habitat. The continued existence of the Mojave population also is threatened by illegal collection, an upper respiratory disease, excessive predation of juvenile tortoises by common ravens, and other factors. The listing of the Mojave population of the desert tortoise as threatened provides protective measures of the Act and will provide for an active recovery program for the population. For purposes of regulating commerce and taking of federally listed species, the rule determines the Sonoran population of the desert tortoise found outside its natural range of Arizona (south and east of the Colorado River) and Mexico to be a threatened species due to similarity of appearance to the Mojave tortoises.

EFFECTIVE DATE: The effective date of this rule is April 2, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ruesink, Chief, Branch of Endangered Species at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, Sonoran, and Sinaloan deserts in the southwestern United States and adjacent Mexico. *G. agassizii* has been referred to in the literature as *Xerobates agassizii* or *Scaptochelys agassizii*.

Recent studies based on shell shape and variations in genetic composition indicate that the species has two distinct populations, the Mojave and Sonoran populations. The Mojave population may be further divided into two subpopulations based on allozyme and mitochondrial DNA analysis. The genetic differences within the Mojave population appear to be more like a cline or gradation from east to west.

The Colorado River has been an effective geographic barrier, separating the Mojave and the Sonoran populations for millions of years. The Mojave population is found to the west and the north of the river and the Sonoran population is found to the east and south. The Mojave population may be further divided into two subpopulations, western and eastern. A low sink that generally runs from Death Valley to the

south may be used to separate the western and eastern subpopulations. The western Mojave subpopulation includes tortoises occurring within the western Mojave Desert, west of this sink. The eastern Mojave subpopulation includes tortoises in eastern California (Mojave and Colorado Deserts), southern Nevada, northwestern Arizona, and Utah. The northeastern corner of the population's range is sometimes referred to as the Beaver Dam Slope subpopulation. In 1980 the Beaver Dam Slope subpopulation was listed as threatened in Utah. However, the Beaver Dam Slope subpopulation also encompasses tortoises in parts of Nevada and Arizona that were not listed. This rule treats the entire Beaver Dam Slope subpopulation as part of the Mojave population of the desert tortoise. Tortoises occur in creosote bush (*Larrea tridentata*), cactus and shadscale (*Atriplex confertifolia*) scrub habitats, and Joshua tree (*Yucca brevifolia*) woodlands (Dodd 1986).

The Desert Tortoise species is long-lived with a relatively slow rate of reproduction. Animals do not reach sexual maturity until they are 10 to 15 years old. Tortoise populations are probably dependent on relatively rare years of sufficient and timely precipitation to produce sufficient forage for reproduction and survival. This life history makes a species susceptible to environmental perturbations that may affect recruitment of young animals into the population, or survival of breeding adults before replacement.

Analysis of study plot data from sites in the western Mojave Desert indicate that subpopulations (both adults and especially juveniles) have declined over the last decade. Vandalism, collecting, raven predation, and disease are a few of the many factors that are implicated in population declines. Habitat conditions have deteriorated and/or habitat has been lost in certain localities resulting from urban, energy, and mineral development; conversion of native habitats to agriculture ("ag-land conversion"); vehicle-oriented recreation; livestock grazing; military activities; and other uses. Luckenbach (1982) concluded that human activity is the most significant cause of tortoise mortality.

The eastern Mojave subpopulation includes tortoises in the Mojave Desert in eastern California, southern Nevada, extreme northwestern Arizona (north of the Grand Canyon) and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah. The Beaver Dam Slope subpopulation of the Mojave population of desert tortoises was listed in Utah as threatened with critical habitat on August 20, 1980 (45 FR 55654). Eastern Mojave tortoises occur in creosote bush-burro bush (*Ambrosia dumosa*) or creosote bush-Joshua tree vegetation types. Analyses of data suggest that there has been a notable decline in population numbers at the northeast end of the range in Utah and extreme northern Arizona in the Beaver Dam slope subpopulation. The rest of the eastern Mojave population shows a decline in juveniles, but data are insufficient to indicate a clear trend in overall numbers. Urban development, long-term livestock grazing, mining, off-road vehicle use, collecting, military activities, and many other human-related uses continue to adversely affect tortoises in the eastern Mojave.

Land that supports the Mojave population of the desert tortoise is owned by a wide variety of agencies and individuals. About half of the land is owned by the Bureau of Land Management. Other Federal holdings include military installations such as Fort Irwin, Edwards Air Force Base, Twenty-nine Palms Marine Corps Training Facility, Chocolate Mountains Gunnery Range and China Lakes Naval Weapons Station. Tortoises are also found on lands managed by Indian tribes. About two-thirds of the habitat is federally owned. The State governments own small amounts of land supporting the tortoise. Private parties also own large amounts of habitat, particularly near the growing urban centers. In several portions of the Mojave Desert alternating sections are owned by private parties and the Bureau.

The distribution of Sonoran population includes Arizona (south and east of the Colorado River) and Mexico. Tortoises in this area are found predominately on steep, rocky slopes of mountain ranges or sloping foothills, primarily in Arizona upland vegetation dominated by palo verde (*Cercidium floridum*) and saguaro cactus (*Carnegiea gigantea*). The distribution of the present population and habitat is patchy and disjunct. Some habitat has been lost from expansion of urban areas, grazing, mining, and fire. Tortoise occupy thornscrub habitats in Sonora and northern Sinaloa, Mexico where they apparently may not dig burrows. Virtually no information exists on distribution and abundance in this habitat type.

The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(B)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

Data collected on the Mojave population within the last year indicate that many local tortoise subpopulations throughout the range of the population have declined precipitously. The apparent distribution of Upper Respiratory Disease Syndrome (URDS), not identified before 1987 in wild tortoises, has suggested the possibility of an epizootic condition and thus may be a significant contributing factor to the current high level of tortoise losses documented from certain localities.

On May 31, 1989, the same three environmental organizations which petitioned the Service in 1984 provided substantial new information and petitioned the Service to list the desert tortoise as an endangered species throughout its range in the United States under the expedited emergency provisions of the Act. This second petition, treated by the Service as a petition under the Administrative Procedure Act, was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on URDS, evidence of osteomalacia and osteoporosis, and the current status of the tortoise.

As a result of this and other information, the Service determined the Mojave population of the desert tortoise to be an endangered species under an emergency rule issued on August 4, 1989. The Service did not take emergency action to reclassify the Beaver Dam Slope subpopulation in Utah to endangered because it was already protected by the Act. The emergency rule ceases to have force and effect on April 2, 1990. *See* 16 U.S.C. 1533(b)(7). On October 13, 1989, the Service published a proposed rule (54 FR 42270) to list the Mojave population of the desert tortoise as endangered. As a result of this proposed rule, a public comment period was opened, and three public hearings were held. See Summary of Comments and Recommendations below.

Because the emergency rule expires on April 2, 1990, it is necessary that this rule be effective upon publication to provide for continued protection under the Act. A lapse in protection for the

Mojave desert tortoise population could result in irrevocable harm to the population if urban construction projects and other activities resume resulting in take of tortoises and destruction of habitat. If protection were to lapse, serious law enforcement problems would arise because the Government would have to prove that allegedly unlawful takings did not occur during the period of the lapse. Accordingly, the Service finds that good cause exists for this rule to take effect immediately upon publication.

This rule constitutes the Service's final action on the above petitions to list the desert tortoise, regarding the petitions' application to the Mojave population of the tortoise in the United States (north and west of the Colorado River). The Service will continue to evaluate the status of the Sonoran population (tortoises located south and east of the Colorado River), and in settlement of litigation, has agreed that on or before January 15, 1991, it will determine either that a proposal to list the Sonoran population of desert tortoises as an endangered or threatened species is warranted, as provided in Section 4(b)(3)(B)(ii) of the Act, 16 U.S.C. 1533(b)(3)(B)(ii), or that such action is not warranted, as provided in Section 4(b)(3)(B)(i) of the Act, 16 U.S.C. 1533(b)(3)(B)(i).

Summary of Comments and Recommendations

In the October 13, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision on listing. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Bakersfield Californian (November 3, 1989), Barstow Desert Dispatch (November 3, 1989), Lake Powell Chronicle (November 3, 1989), Las Vegas Review-Journal (November 3, 1989), Las Vegas Sun (November 3, 1989), Lincoln County Record (November 9, 1989), Palm Springs Desert Sun (November 3, 1989), Palo Verde Valley Times (November 3, 1989), Ridgecrest Daily Independent (November 3, 1989), Riverside Press-Enterprise (November 3, 1989), St. George Daily Spectrum (November 3, 1989), and San Bernardino Sun (November 3, 1989), all of which invited general public comment and gave notice of public hearings. Public hearings were conducted in Riverside, California on November 20, 1989; Las Vegas, Nevada on November 28, 1989; and St. George, Utah on November 29, 1989. A total of 133 individuals provided oral and/or written comments at the hearings. An extension of the comment period to January 19, 1990, was published on December 15, 1989 (54 FR 51432) and corrected on January 12, 1990 (55 FR 1230).

During the comment period, totaling 98 days, 1,909 written and oral comments on listing were received. Of the 1,882 comments that stated a position on listing, 1,072 (57 percent) supported listing, 205 (11 percent) supported listing for part of the population's range, and 608 (32 percent) opposed listing; 27 comments stated no position. These comments are summarized below.

Support for the listing proposal was expressed by California Department of Fish and Game, Arizona Game and Fish Department, and Utah Division of Wildlife Resources. Nevada Department of Wildlife supported listing the desert tortoise as threatened. The Bureau of Land Management (Bureau), U.S. Air Force, California Department of Parks and Recreation, Mexico's Fauna Silvestre, 51 conservation organizations (or branches thereof), and 1,013 other interested parties also supported listing.

Opposition to the listing proposal was expressed by Utah Division of Lands and Forestry, California Off-Highway Motor Vehicle Recreation Commission, Five-county Association of Governments (southwest Utah), Washington County in Utah, 25 organizations, and 576 other interested parties. Comments questioning or opposing the listing also were submitted by Clark County, Nevada; Utah Office of Planning and Budget; Utah Division of Agriculture; City of St. George; and Bureau of Reclamation.

Analysis of written comments and oral statements obtained during the comment period and the public hearings is combined in the following summary. All issues raised by those presenting comments, including opposing comments and other comments questioning the rule, can be placed in a number of general groups depending on content. These categories of comment, and the Service's response to each, are listed below.

Comment 1: The Service lacks sufficient biological information needed to make a determination on the appropriateness of listing the tortoise.

Service response: The Service believes that sufficient biological information exists upon which to make a determination on the appropriateness of listing for the Mojave population of the desert tortoise based upon long-term biological studies primarily conducted by the Bureau. The Mojave population of the desert tortoise is threatened by loss and degradation of habitat due to construction activities (roads, pipelines, powerlines, housing developments, energy developments, etc), mining activities, grazing, and off-road-vehicle use. An upper respiratory disease has been identified in many areas (see Factor C in the "Summary of Factors Affecting the Species"). In localized areas, predation of juvenile tortoises by ravens has greatly reduced recruitment into the adult population (Berry 1989 pers. comm.). Factors adversely affecting the long term survival of the Mojave population of the desert tortoise are documented under the section entitled "Summary of Factors Affecting the Species".

Comment 2: The Service should determine precisely why the tortoise is declining prior to its listing.

Service response: The Act requires the Service to make determinations on the appropriateness of listing based upon the best biological information available. The Service is not required to know the exact extent to which many factors may affect a species. In the case of the Mojave population of the tortoise many factors apparently act cumulatively to threaten its continued existence; and no one threat alone appears sufficient to cause the trends that have been noted. Although the extent of each adverse activity or disease on the overall population is not precisely known, available data indicate a decline in numbers in portions of the population's range. For the Service to not proceed with the information now available would not be in keeping with the mandates of the Act.

Comment 3: Data demonstrating a decline in desert tortoise populations are flawed because of sampling techniques and data analyses.

Service response: The Service is aware that there are assumptions and possible flaws in the design and implementation of desert tortoise transects and permanent plots to monitor population distribution and numbers. For example, different sampling methods and variable research efforts were used. In analyzing the available data on the desert tortoise, the Service has considered these assumptions and possible flaws as well as various ways to interpret analysis of data. However, the Service concludes that the data are sufficient to indicate a downward trend in tortoise populations (both adults and juveniles) in the western and northeastern Mojave

Desert; juvenile tortoise numbers show a decline at some locations in the eastern Mojave Desert.

Comment 4: The Service should conduct more research prior to listing the tortoise.

Service response: After a thorough review of the status information the Service concluded that sufficient biological information existed to support threatened status for the Mojave population of the tortoise to be threatened. As with most listed species, the Service recognizes additional research will be an integral part of the future management for the desert tortoise.

Comment 5: The desert tortoise is widespread and therefore not endangered.

Service response: A widespread species may be listed as endangered or threatened if one or more of the five listing criteria, given below, threatens the species with extinction throughout all or a significant portion of its range. The Mojave population of the desert tortoise is threatened by habitat loss from construction activities (highways, energy developments, urbanization, mining, etc.) and degradation (grazing and off-road-vehicles). URDS has been identified in many areas of the Mojave Desert. Predation of juvenile tortoises by ravens has reduced recruitment in localized parts of the Mojave Desert. Thus, even though the Mojave population of the desert tortoise is widespread, it is threatened by one or more factors throughout most of its range.

Comment 6: Because an estimated 500,000 to 2,000,000 desert tortoises exist in the wild and 100,000 in captivity, the tortoise cannot be endangered.

Service response: As mentioned above, the Service makes listing determinations based upon the best biological information available. Any one or all of the five listing factors may be sufficient to list a species as either threatened or endangered if that species meets one of the definitions under the Act. Numbers of animals alone cannot be used to determine whether listing is appropriate. The Service finds that, in addition to documented tortoise declines in many portions of the Mojave Desert, there are a variety of limiting factors and threats that have affected and continue to affect tortoises in the Mojave Desert.

Comment 7: There are no data to show that livestock grazing has a direct impact on the desert tortoise.

Service response: Grazing by livestock has occurred on most if not all of the Mojave Desert within the range of the desert tortoise. Damage caused by grazing livestock includes destruction of tortoise burrows and reduction of shrub cover which are needed by tortoises for thermoregulation and for protection from predators. The desert tortoise is an herbivore and has evolved within an ecosystem containing a variety of forbs and perennial grasses native to the Mojave Desert. Livestock grazing has changed the species composition and abundance of herbaceous vegetation in the Mojave Desert through selective livestock grazing pressures and the subsequent introduction and proliferation of non-native annual grasses. Grazing also appears to have reduced the abundance of perennial grasses. In many locations in the Mojave Desert the alien grasses dominate the herbaceous layer. These alien grasses may not meet the nutritional needs of the tortoise, especially during critical periods of growth and reproduction. Additionally, dried non-native annual grasses provide a means for fire to spread over large areas, killing shrubs that are an important component of tortoise habitat. With the development of water sites in recent years throughout the Mojave Desert, livestock now graze more areas of the desert than in historical times. Although much of the information regarding the effects of livestock grazing on the desert tortoise is based on indirect evidence, this increased area of impact, change in vegetation composition, increase in fire frequency, and loss or reduction of shrubs for cover and thermoregulation indicate that grazing may adversely affect the desert tortoise.

Comment 8: Livestock grazing may be beneficial to desert tortoises. Data indicate that when livestock numbers were greater, tortoise numbers were greater. Now that livestock numbers have been reduced, tortoise numbers have declined.

Service response: Whereas a rough correlation over time between numbers of tortoises and numbers of livestock may exist, there is no quantitative data to demonstrate a beneficial cause-and-effect relationship between livestock and tortoises. Substantial evidence shows that livestock grazing has altered the habitat of the desert tortoise. This information has been discussed under the previous comment and under factor A in the Summary of Factors Affecting the Species. Although the amount of livestock grazing in the Mojave Desert has been reduced in recent years, much of the Mojave Desert is still in only a fair or poor ecological condition. The full recovery of desert shrubs, forbs, and perennial grasses from past overgrazing practices to their ecological potential likely requires several decades. Tortoise populations likely will respond to the improved habitat conditions very slowly, because of their low reproductive and recruitment potential.

Comment 9: There is no evidence that off-highway vehicle activities have resulted in a population decline of desert tortoises.

Service response: The results of off-highway vehicle studies demonstrate that operation of off-highway vehicles has a negative effect on reptiles, mammals, and birds in creosote shrub and desert wash habitats (NERC 1990). These are habitats of the desert tortoise in the Mojave Desert. Impacts include loss of the vegetation required by tortoises for forage and cover, collapse of tortoise burrows, soil compaction which reduces surface water penetration and seed germination, and crushing tortoises. Quantifiable reductions in tortoise numbers have been documented through field research (NERC 1990). Several decades may be needed for these disturbed areas to recover.

Comment 10: Predation is the most serious threat to the desert tortoise.

Service response: Common raven (Corvus corax) populations in the Mojave Desert have greatly increased with expanding human use and occupation of the desert. Ravens utilize sewage ponds, landfills, litter, and road kills as forage, and powerlines and fence posts for nest and roost sites. Whereas the potential exists that raven predation of young tortoises may increase as the raven population grows, specific birds are currently believed to be responsible for most of the predation of juvenile tortoises.

Comment 11: The desert tortoise should not be listed as endangered or threatened because many of the factors that adversely affect it are beyond human control. These factors include long-term drought, disease, and predation.

Service response: The Act requires the Service to list a species as endangered or threatened based upon an evaluation of threats. The Act does not distinguish between human-induced and natural threats. Hence, if there existed a natural threat to the continued existence of a species, listing would be appropriate even if humans could do nothing to minimize the threat. In the case of the tortoise, natural weather patterns do create conditions that threaten the tortoise. However, grazing, off-road-vehicle use, and other land uses exacerbate the adverse effects of unfavorable weather patterns. Predation on tortoises by ravens is natural, although some evidence suggests that

raven populations have increased in response to human use of the desert. Where grazing animals or off-road-vehicle use have reduced vegetative cover, tortoises are more vulnerable to predation due to a loss of cover sites. Moreover, environmental stress brought on by human use of the desert may make tortoises more susceptible to disease.

Comment 12: Supplemental feeding and watering should be used to alleviate some of the threats facing the tortoise.

Service response: Although supplemental efforts such as feeding and watering wild tortoises have been suggested, these efforts have only localized benefits at best, and may not provide the nutritional requirements of the tortoise. Nor is it known if such actions contribute toward the recovery of the species. Such effects would be considered only as a necessary means to support the long-term conservation of the species.

Comment 13: Listing the desert tortoise will adversely affect private property values and will restrict the use of private land. Executive Order 12630 directs the Service to conduct a Takings Implication Assessment.

Service response: The listing of the mojave population may or may not affect land values. The Act requires the Service to make listing determinations based on the best biological information available. Economic considerations may not be used in listing determinations. The tortoise will be protected from take wherever it occurs. Section 10(a) of the Act offers to private parties a permit process for the take of listed species incidental to other legal activities. The Service will advise private land owners regarding this process. The Service will be preparing a Takings Implication Assessment regarding this listing.

Comment 14: Listing the desert tortoise will result in the closing of or restricting access to public lands.

Service response: The listing of the desert tortoise by emergency rule in August 1989 has resulted in few restrictions in the use of public land. Tortoise management may require modifications in the use of public lands. Such management plans require Federal agencies to consult with the Service pursuant to section 7 of the Act. Through the section 7 consultation process, the Service has issued biological opinions that include recommendations that generally offer reasonable conservation recommendations for the benefit of the desert tortoise. Listing the desert tortoise as a threatened population may result in better management of the ecosystem upon which the tortoise depends. It is conceivable that a Federal agency may, through ecosystem management for the desert tortoise, limit the type or amount of access to an area or areas deemed to be important to the recovery of the tortoise.

Comment 15: Existing regulations to protect the desert tortoise are adequate. The state laws providing protection from take, the Bureau's Rangewide Management Plan, and National Environmental Policy Act provide the same protection that listing under the Endangered Species Act would provide.

Service response: The tortoise has been protected by State law or regulation from collecting in the States of California, Arizona, Utah, and Nevada. Despite this protection, collection of tortoises from the wild has continued. State regulations generally do not apply to habitat modification, which is a serious long-term threat to the tortoise. In June 1989, the California Fish and Game Commission adopted a regulation listing the desert tortoise as a threatened species. This action offers limited opportunities for protection of habitat. Arizona, Nevada, and Utah lack provisions to protect tortoise habitat. The majority of the desert tortoise's habitat is located on Federal lands. Management decisions by Federal agencies that would benefit the tortoise or include effective mitigation were optional or a matter of policy prior to Federal listing of the tortoise. Since the emergency listing of the desert tortoise on August 4, 1989, the tortoise has received protection afforded by the Act. Many provisions of the Act including the requirements for Federal agencies to consult under Section 7, and the prohibitions against take described in Section 9 are discussed later in this rule.

If implemented, the Bureau's Rangewide Plan may result in the reversal of some downward trends; however, it likely will be several years before any positive change is observed. Moreover, approximately 50 percent of the land supporting tortoises is not managed by the Bureau, and hence, even if fully implemented, this Rangewide Plan may not provide sufficient improvement in tortoise habitat to preclude the need to federally list the population. Federal listing mandates the Bureau and other Federal agencies to perform certain actions for the tortoise.

Some commenters suggested that the National Environmental Policy Act and California Environmental Quality Act provide sufficient protection for the tortoise. The National Environmental Policy Act requires Federal agencies to fully disclose impacts that would result from their proposed actions, and requires findings be made regarding the significance of those impacts. It does not require that resources be protected. Similarly, the California Environmental Quality Act requires state and local agencies to fully disclose impacts that would result from their proposed actions. In some cases these acts may be used to obtain mitigation for an impact, but neither act provides for the protection of the desert tortoise.

Comment 16: Several commenters expressed concerns related to mitigation for impacts to the tortoise resulting from projects. These concerns were as follows: the listing could prevent mitigation that is beneficial to the tortoise; the Service should develop mitigation guidelines for projects prior to listing; the Service should prepare a Habitat Conservation Plan for the tortoise to streamline development and provide mitigation for the tortoise.

Service response: Listing of the tortoise will not hamper any action that in the judgment of the Service is of benefit to the tortoise. Mitigation or compensation for impacts to the tortoise resulting from projects may be formalized by following the procedures set forth at section 7 or section 10(a) of the Act. Through section 7 of the Act, the Service will work with other Federal agencies to ensure that measures are incorporated into projects so that adequate protection of tortoises and their habitat is provided. Section 10(a) of the Act provides a means for private parties to obtain permits to take tortoises incidental to otherwise legal activities provided that several conditions are met. It is the responsibility of the applicant (City, County or State government, or private party) to prepare a conservation plan. The Service is willing to advise individuals and governments in the preparation of such conservation plans and Section 10(a) permit applications. The Service works with other Federal agencies and private parties to obtain needed compensation for listed species. In time, guidelines can be developed.

Comment 17: Critical habitat should be designated in the final rule.

Service response: The Act requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that critical habitat is not presently determinable because the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Much of the habitat of the desert tortoise has been fragmented and degraded by a number of land-disturbing activities. Some

remaining areas of good habitat are isolated from each other or are of small size. The specific size and spatial configuration of these essential habitats, as well as vital linkages connecting areas necessary for ensuring the conservation of the Mojave desert population throughout its range, cannot be determined at this time.

Comment 18: The Service should change the boundaries of the critical habitat on the Beaver Dam Slope, Utah in the final rule.

Service response: The Service will continue to evaluate the existing critical habitat boundaries on the Beaver Dam Slope. Should the Service determine that a change is appropriate, a proposal would be published in the Federal Register. The Service would evaluate public comments on such a proposal prior to making a determination on the appropriateness of changing critical habitat boundaries.

Comment 19: The Service should prepare a recovery plan for the tortoise rather than a listing document.

Service response: Listing a species or population as endangered or threatened provides for several actions that promote the conservation of the species. The preparation of a recovery plan is one of these actions and is required under the Act. Recovery plans set forth a series of tasks that will assist in the improvement in the species condition. Listing provides for funding opportunities to implement some recovery actions. Although the Service does participate in actions to improve the status of species prior to listing, the bulk of this work is done following listing. Consequently, it is the listing of the tortoise that precipitates preparation of a recovery plan.

Comment 20: A recovery plan should be finalized within one year of listing the desert tortoise.

Service response: The Service intends to pursue development of a recovery plan as soon as possible. Given the time required to prepare a recovery plan for a wide-ranging species subjected to a variety of threats, and the public as well as agency review process that all recovery plans must follow, it is unlikely that a recovery plan for the desert tortoise will be final within one year.

Comment 21: Desert tortoises in the Las Vegas Valley should be excluded from Federal listing because the listing would cause economic hardship. In addition, tortoise densities, numbers, and size of habitat available suggest that maintenance of a long-term viable tortoise population in the Las Vegas Valley is unlikely.

Service response: A species shall be listed if the Secretary determines, on the basis of the best scientific and commercial data available, that the species is endangered or threatened because of threats to its continued existence. Economic considerations cannot be used in listing determinations. Furthermore, listing of a species is not predicated on the species' ability to recover. While the maintenance of a long-term viable population of the desert tortoise in the Las Vegas Valley may be unlikely, this information actually points in favor of listing rather than against listing.

Comment 22: With the Service's petition findings in 1985, 1987, and 1988; publication of the emergency rule; and additional information to show further tortoise declines, the Service is required to publish a final rule to list the desert tortoise.

Service response: Following publication of a proposed rule, the Service has the option of publishing a final rule to list a species as endangered or threatened, withdrawing the proposed rule, or delaying the final decision. After review of all public comments and consideration of the best biological information available, the Service is publishing a final rule to list the Mojave population of the desert tortoise as threatened.

Comment 23: The Sonoran population suffers from the same threats as does the Mojave population. The Service should, therefore, list the Sonoran population as well as the Mojave population.

Service response: The Service, in settlement of litigation, has agreed that on or before January 15, 1991, it will determine either that a proposal to list the Sonoran population of desert tortoises as an endangered or threatened species is warranted, as provided in section 4(b)(3)(B)(ii) of the Act, 16 U.S.C. 1533(b)(3)(B)(ii), or that such action is not warranted, as provided in section 4(b)(3)(B)(i) of the Act, 16 U.S.C. 1533(b)(3)(B)(i).

Comment 24: Captive animals should be released to augment declining wild populations.

Service response: As discussed under Factor C in the Summary of Factors Affecting the Species, the release of captive animals may harm the recipient population by introducing disease. In addition, released captive animals rarely survive.

Summary of Factors Affecting the Species

The Service received no data or information indicating that the status of the Mojave population of the desert tortoise is far healthier than previously thought, or that large blocks of appropriate or undisturbed habitat can be found within the range of the population in California, Nevada, Utah, and Arizona. No data were presented contradicting the effects of habitat conversion activities (e.g., urban development, mining, military activities, waste disposal sites, energy development, and road construction), habitat modification activities (e.g., off-highway vehicle activities, utility corridors, grazing, changes in land use designations), predation, Upper Respiratory Disease Syndrome, collecting, or vandalism on tortoises.

After a thorough review and consideration of all information available, the Service has determined that the Mojave population of the desert tortoise (*Gopherus agassizii*) should be classified as a threatened species. Procedures found in section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The Act defines species to include subspecies and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. These factors and their application to the Mojave population of the desert tortoise (*Gopherus agassizii*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* As indicated above, habitat is deteriorating and has been lost in many parts of the tortoise's range due to an accelerating rate of human uses of the desert. Loss of habitat from a variety of human land uses has occurred throughout the Mojave Desert and is particularly acute all over the western Mojave, the Las Vegas area, and the St. George area in Utah. Urbanization in the western Mojave has grown significantly in recent years, especially near the communities of Lancaster, Palmdale, Victorville, Ridgecrest, and Barstow, which are some of the rapidly urbanizing areas. Based on the recent past and projected into the future, these communities will continue to grow together, having a profound impact on the wildlife species of the western Mojave where the tortoise population once was considered quite extensive. Other permanent human land uses that have an adverse impact on tortoises and their habitat include ag-land conversion, construction of roads, some military activities, energy and mineral development, waste disposal areas and other land uses.

The metropolitan Las Vegas, Nevada, area has experienced rapid expansion in recent years, climbing from 241,000 people in 1980 to 335,000 in 1987, an increase of 28 percent (Walker and Cowperthwaite 1988). In the four years between 1982 and 1986, 10,000 acres of desert (largely tortoise habitat) were converted to urban uses (Clark County Department of Comprehensive Planning, pers. comm. 1989). City and county planners assume the ultimate limits of growth are set at the effective topographic limits of construction; planning maps indicate that the metropolitan area could eventually cover approximately 390 square miles (Clark County Regional Flood Control District 1986).

Areas of unrestricted vehicle use in tortoise habitat results in cumulative adverse impacts. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer loss of forage, vegetative cover, and burrow sites and then become subject to increased mortality from crushing, collecting, and vandalism (Sievers *et al.* 1988).

Adams *et al.* (1982a) examined aerial photographs of the Mojave Desert and reported the following impacts to 10 million hectares (25,500,000 acres): 495 ha (1,287 ac) were highly compacted at pit areas (camping areas with high usage), 2,406 ha (6,256 ac) had heavy use on hills, and 16,391 ha (42,617 ac) had frequent trails on mostly level land. The areas of intensive use totalled about 194 square kilometers (75 square miles) in size and composed less than one percent of all desert lands in California. Light and moderate use areas could not be fully assessed (Adams *et al.*, 1982b). However, off-highway vehicle (OHV) use areas extend significantly beyond the tracks that are created, as noted in a study by Nicholson (1978). Thus, well-used OHV areas may result in areas of depressed tortoise populations extending beyond the immediate boundaries of the directly disturbed habitat itself.

Biosystems Analysis, Inc. (1990) indicated that 2.2 million motorcycles are registered in southern California, and these are primarily used for off-highway recreation. They also note that recreational use of the desert has increased from 5 million visitor use-days in 1977 to about 15 million by 1980. There is no doubt that this use has increased even more in the ten years since 1980.

The increasing use of OHVs appears to be having a significant effect on tortoise abundance and distribution. Direct mortality may result through crushing of tortoises either above ground or in their burrows. Bury and Luckenbach (1986) documented sublethal effects of OHV activity when they noted that tortoises on sites not used by OHVs weighed more than similarly sized animals in a vehicle use area. This indicates that stress may be caused by disruptions of the tortoise's behavior patterns and reductions in forage in areas of low to moderate OHV use.

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collecting, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion (Sievers *et al.*, 1988).

Road construction and vehicle use appear to have a long-ranging impact on the tortoise. Besides the immediate loss of tortoise habitat from road construction, paved roads and vehicular traffic affect tortoise populations within about one kilometer (km) (0.62 mile) of a road. For new roads, the extent of impact is up to 0.4 km (0.29 mile) away, whereas older roads may reduce tortoise numbers up to 2 km (1.24 mile) away (Nicholson 1978).

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause long-term, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction (Berry *et al.*, 1984).

The tortoise must consume its forage requirement during their active period of six weeks to five months out of the year (March to June, and September). If forage has not been produced or is of poor nutritive quality during this period, the opportunity for the tortoise to meet its nutritional needs cannot be met until the next year. Therefore, tortoise populations are highly dependent upon productive native plant communities and may be susceptible to increased mortality during poor years.

Changes in perennial vegetation, including alteration of species composition and reduction in cover of shrubs and perennial grasses, are believed to be the result of long-term livestock grazing. These losses of plant cover, including the creation of openings and barren areas, are believed to result in an overall deterioration of habitat quality. Direct evidence that altered shrub composition has adversely affected the tortoise's ability to meet its nutritional requirements is largely lacking. However, the loss of cover can result in increased exposure to predators and decreased opportunities to use the shade of shrubs for thermoregulation.

Changes in annual vegetation, also thought to be mostly connected to grazing, have affected food supplies for tortoises. Native annual forbs and perennial grasses may be essential in meeting the nutritional needs of the tortoise. Many native species may be unable to compete with non-native annual plant species (Berry 1988). Non-native plant species such as red brome (*Bromus rubens*), filaree (*Erodium cicutarium*), and split grass (*Schismus arabicus*) have been introduced as result of grazing and have become widely established in the Mojave Desert. These alien plants are often more common than native annual species. Some non-native annuals are adapted to disturbed soils. Abundant large herbivores can alter crusts that are normally found on many desert soils and disrupt normal germination of native species.

Unlike most of the native annual plants, these introduced grasses remain in place after curing (drying) and create a fuel source sufficient to carry fire across a large area. Desert shrubs are not fire-adapted; therefore, once a large area has been burned, the shrubs are killed. Because of its slow growth, the shrub component of the desert may take many decades to return to pre-fire conditions. Fire in the Mojave Desert is a recent phenomenon that seriously damages or destroys native perennial shrubs. The reason for the recent occurrence of fire in the desert is credited to the introduction and proliferation of introduced annual grasses. These grasses invade disturbed areas, appear to successfully outcompete native annual vegetation, and eventually dominate the annual biomass production in the area.

The annual grasses, however, have a rapid growth rate and will return and proliferate within a short period following fire or other disturbance. In this scenario reoccurring fires provide an area with little chance of recovery to pre-grazing vegetative conditions. While grazing may reduce the availability of this annual biomass, it also promotes disturbance to these areas thus encouraging the growth of non-native annual grasses. To recreate the native

ecosystem the long-term solution would require restoration and management of these areas for their native floristic composition and biomass. With the development of water sites in recent years throughout the Mojave Desert, livestock now graze more areas than in historical times. This increased area of impact, poor to fair range condition, change in annual vegetation composition, and loss or reduction of shrubs for cover indicate that grazing is more likely detrimental than beneficial to the desert tortoise.

In addition, grazing animals can crush tortoise burrows and nests and trample young tortoises. The degree and nature of impacts from cattle grazing are dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers *et al.*, 1988).

Livestock grazing may be a factor contributing to tortoise habitat degradation throughout the range of the Mojave population. However, formal research has been unable to indicate conclusively that livestock grazing adversely affects tortoises. Desert ecosystems require decades to recover from habitat disturbances, and tortoises are slow to react to alterations, both positive and negative, of their environment. Additionally, rainfall can vary dramatically over small areas, greatly affecting the outcome of paired observations. Therefore, the experiments needed to determine the effects of grazing on tortoise populations will require very long time frames, perhaps decades, and numerous replicates over wide areas and habitat types. However, both the Final Statement for the Proposed Domestic Livestock Grazing Management Program for the Caliente Area, Nevada, and the Final Environmental Impact Statement for the Clark County, Nevada Grazing Program concluded that conflicts between livestock and desert tortoises would be reduced by grazing reductions and/or livestock removal during portions of the growing season (USDI, Bureau of Land Management 1979; USDI, Bureau of Land Management 1982).

The majority of Utah's Beaver Dam Slope allotment is in the Southern Desert Shallow Hardpan Range Site as identified by the Soil Survey of Washington County (United States Department of Agriculture 1977). The potential vegetation composition for this site is approximately 7 to 15 percent (perennial and annual) grasses, 3 to 5 percent forbs, and 80 to 90 percent shrubs. If the site is in excellent condition, the total yearly production of air-dried perennial vegetation available as forage for livestock is about 400 pounds per acre in good moisture years and 250 pounds per acre under poor moisture years. These estimates are for livestock and do not necessarily indicate that this forage would also be available to tortoises. The median production of annual plants on the Beaver Dam Slope between 1980 and 1986 was 83 pounds per acre. The mean (average) production of annuals during that time period was 191 pounds per acre with a range of 50 pounds per acre in 1985 to 604 pounds per acre in 1983.

It is possible that the forage requirements of the tortoise may not be met for several decades or longer. The Bureau (1987) stated that 47 percent of the Beaver Dam Slope allotment is considered to be in fair forage condition whereas 53 percent is in poor forage condition. This estimate was based on desirable forage for livestock, and hence tortoises because of the dietary overlap. In 1983, a livestock grazing system was developed for the Beaver Dam Slope which recognized the need to provide a greater amount of forage for tortoises and distribute livestock evenly across their grazing allotments. Even with implementation of these measures in 1983, tortoise numbers continued to decline, and the overall range condition has not improved.

Another important facet of tortoise feeding behavior is food preferences. Like livestock, tortoises prefer some plants over others and will go out of their way to consume them even if the plant is in low abundance. On Beaver Dam Slope, Coombs (1977b) observed that bush muhly (*Muhlenbergia porteri*) probably was sought out more than any other plant even though it was one of the least available. This perennial grass has been greatly reduced in abundance by livestock grazing (Stoddart *et al.* 1975). The second most important plant was red brome, which was also one of the least common plants available to the tortoise. Minden (1980) found that a milk vetch (*Astragalus nuttallianus*) was by far the most commonly consumed plant in his study (59 percent). This annual plant was not mentioned by Coombs (1977). Apparently, the year of Minden's study (1980) was one of above normal rainfall which allowed this annual forb to grow. It is, therefore, believed that the tortoise has food preferences and that total forage production is not a complete measure of nutrient availability.

A few studies and observations suggest that forage availability influences the health and reproductive condition of tortoises. Turner *et al.* (1984) found that during a year of low rainfall and forage production, female tortoises laid an average of 1.1 clutches in contrast to the previous normal year when an average of 1.6 clutches were produced. Jarchow and May (1989) noted bone abnormalities in tortoises from the Beaver Dam Slope and concluded that malnutrition may be responsible (as cited by NERC 1990). They further concluded that some of the tortoise mortality observed on the Beaver Dam Slope may be the result of malnutrition. Recent observations suggest there are fewer very large tortoises in the Mojave Desert, in general the animals have shorter mean carapace lengths than reported earlier. One possible explanation is that the range condition has deteriorated and no longer provides adequate forage for tortoises.

In northwestern Arizona, the habitat of the Mojave population of tortoises has experienced alteration of plant species composition and density. Examination of livestock use since the 1850s and observation of changes in plant densities and species composition indicate that adequate nutritional forage for tortoises may be lacking because of past overgrazing practices (Hohman and Ohmart 1978).

In this area, additional habitat loss and fragmentation has occurred from mining, off-road vehicle activities, road and powerline construction and maintenance, agricultural development, and commercial, residential, and recreational developments. A current proposal would develop 2,000 acres of tortoise habitat near Littlefield, Arizona, for commercial purposes. Other developments also are planned for this area. Long-term plans call for development of a community of several thousand people in the Littlefield area. Other potential habitat degradation activities include a Bureau proposal for a 2-mile wide utility corridor alternative across the Beaver Dam Slope in Arizona.

Land exchanges indirectly may result in habitat loss and increased fragmentation of populations. Even where tortoise habitat is exchanged by the Bureau for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat on the new private holdings (Sievers *et al.*, 1988).

The Bureau recently transferred 3,067 acres of moderate density lands, west of Las Vegas, Nevada to Summa Corporation. The Desert Tortoise Council (Council) estimated that from 300 to 800 tortoises would be displaced by the exchange, and 3,470 acres of crucial tortoise habitat, as defined by the Council, would be lost to private

development (Desert Tortoise Council 1987). Recent legislation directs the Secretary of the Interior (Secretary) to sell 3,700 acres of moderate-to-high density tortoise habitat, 20 miles northeast of Las Vegas, to Clark County. The Secretary also is authorized to offer for sale up to 17,000 additional acres in the same area (Pub. L. 101–67. Apex Project, Nevada Land Transfer and Authorization Act of 1989. July 31, 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Desert tortoises have long been a popular pet in the southwest. It is not known to what extent collecting has reduced wild populations. Collection of tortoises on the Beaver Dam Slope has occurred in the past, and although the species is now protected in Utah, some collecting may still occur. On the Beaver Dam Slope in Arizona, heavy collection for the pet trade took place until the 1970s (Coomb 1977). Although prohibited, removal of tortoises from the wild probably continues. The California Department of Fish and Game recently cited an individual for collecting desert tortoises.

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the Bureau and is considered a factor in reducing the number of tortoises in their natural habitat. Bureau studies (Sievers *et al.* 1988) in the western Mojave Desert of California on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. At one plot, 28.9 percent of the carcasses had evidence of gunshot. Loss of tortoises from vandalism has also been reported in northwest Arizona. Approximately 10 percent of shell remains from a tortoise study plot near Littlefield, Arizona, had gunshot wounds (Charles Pregler, Bureau of Land Management 1989).

C. *Disease or Predation.* Predation of young tortoises by ravens is a local and potentially growing threat to the species. In recent years, raven predation on juvenile desert tortoises has been documented in several locations and tortoises in certain smaller size classes could not be found. Recruitment of young tortoises into the adult population probably has been significantly reduced in these localities. For example, at the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert in California, tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises. However, raven predation seems to have severely curtailed the abundance of young tortoises (Bureau of Land Management 1989). Tortoise remains were found under raven nests or perches at four study plots in the western Mojave Desert and in the Ward Valley and near Goffs in the eastern Mojave, as well. Preliminary indications from a 1989 Bureau-funded tortoise study at the Piute Valley study plot in Nevada include a relatively large number of young tortoise mortalities due to ravens. In 1986, tortoise remains were found around a raven nest and roost site at the Christmas Tree Pass study plot in Nevada (Sid Sloan, Bureau of Land Management, pers. comm. 1989). The carcasses have not been extensively examined in the laboratory and may represent scavenging rather than predation.

Common raven populations in the southwestern deserts have increased significantly since the early 1940s, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. The Bureau's Environmental Assessment (Bureau of Land Management 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years. In the western Mojave Desert, raven populations have increased 1528 percent between 1968 and 1988, at a rate of nearly 15 percent per year. In the Colorado-Sonoran Deserts, raven populations have increased 474 percent in 20 years, at a rate of over 9 percent per year. Whereas all ravens probably do not include tortoises as significant components of their diet, these birds are highly opportunistic in their feeding patterns and concentrate on easily available seasonal food sources such as juvenile tortoises. The overall augmentation in raven numbers increase the likelihood that some ravens will preferrentially select young tortoises. Given the adaptiveness and large foraging area of individual ravens, even a few individuals have the potential to significantly reduce the number of young tortoises over large areas.

In addition to common ravens, coyotes (*Canis latrans*) and golden eagles (*Aquila chrysaetos*) have been known to prey on desert tortoises, including adults. While eagles in general do not commonly forage on tortoises, a few pairs in the California desert are known to regularly take tortoises. Their overall impact probably can be significant in scattered localities throughout the desert.

Coyote predation could have significant impacts on tortoise populations because of the animal's wide range and omnivorous nature. Coyote populations have expanded as a result of water developments in the desert, such as irrigation canals and livestock watering areas; these watering sites may allow the coyote to increase its local distribution (Luckenbach 1982). These expansions would potentially extend the area of sympatry between the tortoise and the coyote. Additionally, variability in abundance of the coyote's food base, such as desert cottontails (*Sylvilagus audubonii*) and black-tailed hares (*Lepus californicus*), could result in a shift in prey items and an increased take of tortoises. Tortoises have also been taken by feral and pet dogs, though such instances of this nature are more likely to occur near urbanized areas.

In general, predation on tortoises is known to have significant localized effects, especially when considered synergistically with other stress-causing factors resulting from human-induced environmental changes. Moreover, the predation impacts of particular concern largely result from and magnify human-caused impacts in the desert (i.e., common raven increases attributable to garbage dumps, etc.; dogs as a result of urbanization; and coyote expansion resulting from water developments).

A new, recently identified, upper respiratory disease (URDS) has been observed in a number of widely dispersed groups of tortoises throughout the range of the desert tortoise in the United States. URDS has been known for some time in captive tortoises throughout the world (Fowler 1985), although the exact cause(s) or etiological agent(s) have not been clearly identified. Recent investigations have established that the URDS found in wild desert tortoises in the Mojave desert is clinically similar to that described in captive tortoises (Jacobsen and Gaskin 1990). Researchers have observed this disease in captive groups of other species of tortoises including red-footed tortoises (*Geochelone carbonaria*), leopard tortoises (*G. pardalis*), Indian star tortoises (*G. elegans*), radiated tortoises (*G. radiata*), and gopher tortoises (*Gopherus polyphemus*) (Jacobsen and Gaskin 1990).

Rhinitis, or inflammation of the nasal cavities, with accumulation of a caseous exudate, is the significant feature of URDS. Only chronically ill tortoises have been examined to date, so the signs of the disease in its early stages are not known. Chronically ill animals

show discharge from the nares, which can be intermittent, but can become severe enough to completely occlude the nasal passages. A wet, bubbly nose, with or without mucous, is a common diagnostic sign; however, this sign may not be evident if tortoises "wipe" their noses with their forelimbs, or if the nasal passages are completely blocked. Tortoises in the advanced stages of the disease appear listless with dull skin and recessed eyes indicating a dehydrated condition (Jacobson and Gaskin 1990).

This disease appears to affect primarily the upper respiratory tract (i.e., nasal passages) with minimal effects to the lower respiratory tract (trachea, bronchial tubes, lungs). Antibiotic treatment has not been successful and the duration of illness is unknown (Jacobson and Gaskin 1990), although animals with URDS have survived up to one year. If the disease remission does occur, relapse may occur under stress conditions (Rosskopf 1988).

In captivity, the disease appears to be contagious and may be spread via physical contact between infected and non-infected animals (Rosskopf 1988), although evidence to date remains circumstantial (Jacobson and Gaskin 1990). Adult male tortoises may contact many females in a single breeding season and direct nose contact during courtship activities could spread the pathogen to susceptible tortoises.

The release of captive desert tortoises does not restore these captives to the wild because it is unlikely they will adapt and survive to reproduce. Further, such reintroduction efforts may damage resident tortoise populations from introduction of disease, disruption of their social system, and genetics contamination.

The proximate causative agent(s) of the disease or what ultimately kills the animal is still not known. Recent laboratory investigations have evaluated clinical and anatomic histopathological and microbial findings in a group of URDS and healthy tortoises (Jacobson and Gaskin 1990). These studies implicate two organisms, *Mycoplasma* and *Pasturella testudinis*, each or both of which may be, at least in part, responsible for this disease (Jacobson and Gaskin 1990). Both of these organisms are known to cause chronic upper and lower respiratory tract disease in a variety of domestic mammals and birds. Despite these preliminary indications, Jacobson and Gaskin (1990), caution that additional research (e.g., transmission studies) is essential in determining the significance (if any) of these organisms in the URDS found in desert tortoises.

The significance of these early results is limited due to the fact that the samples of ill tortoises have not included animals in the initial stages of the disease (difficult, if not impossible, to detect in wild tortoises) or in the moribund or final stages of the disease. For example, although no viruses have been identified in any diseased animals, a virus could be involved in the early stages of the disease that would require further viral isolation attempts to adequately detect (Jacobson and Gaskin 1990). They further suggest that the cause is probably multifactorial, involving a number of predisposing factors. Such factors may include introduction of extremely pathogenic organisms into the wild, habitat disturbance and degradation resulting in nutritional and behavioral stress, and subsequent impairment of proper immune function and potential effects of toxicgents (Miller 1985, Ullrey 1986, Nockels 1988).

Recently, it has been suggested that URDS may be widespread and causing significant problems in the western Mojave Desert (Faunawest 1989), although there is some evidence that the disease was present as early as 1977 (Fowler 1977). With the increased awareness generated by this survey, additional reports of URDS have come in from throughout the desert tortoise range. There is, as of yet, no standard criteria for the diagnosis of URDS in wild tortoises.

Signs suggestive of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot. While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease could have on any given population.

In California, signs of the URDS have recently been identified in tortoises from several sites in the western Mojave Desert (Bureau of Land Management 1989). Recent field investigations at the following sites have discovered evidence of URDS: the Desert Tortoise Natural Area (9 percent, 25 percent, 43 percent, and 52 percent incidence of signs at four different locations); Honda properties near the Desert Tortoise Natural Area (4 sick tortoises found); Edwards Air Force Base (2 of 4); Stoddard Valley study plot (8 of 10); Lucerne Valley study plot (3 of 8); Fremont Peak study plot (possible 2 of 29); and around Lenwood (2 of 13) (Bureau of Land Management 1989).

Evidence of URDS also exists from locations in the eastern Mojave including eastern California (Fenner-Chemehuevi), southern Nevada (east and north of Las Vegas at four locations), and northern Arizona and Utah (Beaver Dam Slope) (Bureau of Land Management 1989).

The potential exists for the URDS to reach epizootic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from already infected groups of animals to other groups of animals anywhere in the Mojave Desert. The release of diseased captive tortoise may spread the disease faster than the natural movement of tortoises between areas. Our current knowledge of the distribution of the URDS is, at least in part, a function not only of where the disease has become established already but also where field biologists have looked in recent years. More field investigations could yield new locations of tortoises with the URDS.

In their recent study, Jacobson and Gaskin (1990) found elevated levels of mercury in the livers of ill tortoises as compared to the livers of healthy tortoises. While toxic levels and effects of mercury in desert tortoises must still be determined, elevated mercury levels in other species have been associated with altered resistance to infectious diseases and decreased immunocompetence.

Berry and Coffeen (1987) analyzed 100 remains of desert tortoises collected between 1982 and 1986 on the Beaver Dam Slope, Utah. Almost all of the remains were collected from two permanent study plots, Woodbury-Hardy and Beaver Dam Slope. Of the 72 tortoises found on the Woodbury-Hardy plot and one off the plot, 15 (20.6 percent) of the specimens showed thinning of the plastron (lower shell) and/or carapace (upper shell), holes in the bone, or a honeycomb structure. An additional five specimens (6.9 percent) had deformed bones (pelvic girdle) or eroded bones. Another 15 tortoises (20.6 percent) showed no evidence of abnormalities or thinning of bones. The remaining 38 specimens (52 percent) could not be evaluated. Of the 23 tortoises from the Beaver Dam Slope and 5 from nearby, 9 (32.1 percent) showed evidence of thin bones and/or holes on the plastron and/or carapace or honeycombing on the girdles. None

(32.1 percent) had normal bones and an additional nine could not be classified.

In 2,300 tortoise specimens observed in California, Berry found very few cases of bone abnormality, bone disease, and thinning of bones in young individuals. In contrast, young to middle-aged tortoises from Utah were found in substantial numbers with thin bones or bone disease.

A study by Jarchow (1989) indicated that osteoporosis (porous bones) and associated osteomalacia (soft bones) were found in tortoise shells and skeletons on the Beaver Dam Slope. These lesions could be nutritional in origin.

D. *The inadequacy of existing regulatory mechanisms.* All four States that the Mojave tortoise inhabits have laws that provide varying levels of protection for individual desert tortoises. However, even with these State protective measures, collection of tortoises has continued.

State of Nevada laws afford limited protection to the desert tortoise. Section 501.110.1(d) of the Nevada Revised Statutes (NRS) sets forth that reptiles must be classified as either protected or unprotected. NRS section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. Section 503.080.1(a) of the Nevada Administrative Code classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS Section 503.597 states that it is unlawful to transport a desert tortoise within the State or across State lines, without the written consent of the Nevada Department of Wildlife. Nevada does not have any laws that regulate the degradation of tortoise habitat.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, § 670.5(b)(4) of title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, article 3, section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State law or regulation. California law does allow the lawful possession of tortoises that are hatched in captivity or that were previously captives. Owners of such tortoises are required to obtain a license from the California Department of Fish and Game for these animals.

The California Fish and Game Code, article 4, section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State-listed species. This legislation authorizes the California Department of Fish and Game to regulate the modification of tortoise habitat that could occur through the actions of another State agency. California implemented this requirement in June 1989 and is the only State with such authority.

On January 1, 1988, the Arizona Game and Fish Commission prohibited the take of desert tortoises from the wild (Arizona Game and Fish Commission 1989). The Commission also prohibits the sale of tortoises and the export of tortoises from the State. Prior to that date, anyone with an Arizona hunting license could take and possess one tortoise for each person in that household. No provisions have been made to permit or otherwise identify those tortoises that were in possession prior to January 1, 1988. Thus, enforcement of the State ban on take may not be possible unless the actual taking of a tortoise from the wild is observed. There is no State authority in Arizona to regulate the modification of desert tortoise habitat.

All Utah wildlife species are classified as prohibited, controlled, or noncontrolled. The desert tortoise is considered a "prohibited reptile" under Utah Rule *R608–3 Collection, Importation, Transportation, and Subsequent Possession of Zoological Animals* (Utah Division of Wildlife Resources 1987). Prohibited species are zoological animals that are prohibited from collection, importation, transportation, possession, sale, transfer, or release because they pose unacceptable disease, ecological, environmental, or human health or safety risks. No State regulations exist to stop loss of tortoise habitat through land development or other actions that result in habitat degradation or loss.

The desert tortoise has been considered a sensitive species by numerous government agencies, including perhaps most importantly the Bureau, for several years. However, sensitive species do not receive full consideration and mitigation when the authorities of other Federal laws, such as the Taylor Grazing Act and the 1872 Mining Law, are being implemented. However, under the auspices of the Act, Federal agencies must consult with the Service regarding all actions that may adversely affect the tortoise. The numerous activities occurring on the vast landholdings of the Bureau, Department of Defense, and National Park Service within the tortoise's range will require extensive consultation between the Service and these Federal agencies.

During the period of emergency listing, the impacts of Federal actions have been subject to the rigorous evaluation that results from the Act's section 7 consultation process. The consultations completed to date have insured that actions authorized, funded, or carried out by Federal agencies have not been likely to jeopardize the continued existence of the Mojave desert tortoise.

E. *Other natural or manmade factors affecting its continued existence.* An ancillary effect of continued declines in a species' numbers and loss of habitat is the fragmentation of remaining populations. Long-term survival of these isolated pockets will be aggravated by normal random fluctuations in the population or the environment and catastrophic events that could lead to extirpation. Of particular concern with the tortoise is the continued drought that has affected most of its Mojave range over the past several years. The resulting physiological stress caused by poor nutrition can be accentuated by other perturbations in the environment, such as the increased presence of predators, fire, off-highway vehicles, and competition for existing forage. The synergistic effects of these disturbances could result in the complete inability of both individual animals and isolated groups to return to and maintain population levels that are viable on a long-term basis.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mojave population of the desert tortoise in determining to make this rule final. Based on this evaluation, the preferred action is to list the Mojave population of the desert tortoise as threatened. The Act states that the term "threatened species" means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

The Mojave population of the desert tortoise was proposed to be an endangered species. At that time, information on hand indicated that the presence of a respiratory disease could cause the extinction of the population. Since then, the Service has learned that, although this disease is widespread, some areas appear to be unaffected or affected to a limited degree. Additional threats facing the Mojave population exist throughout its range. These factors, including urbanization, ag-land conversion, mineral and energy

developments, utility corridors, and off-road vehicles, are most pronounced near urban centers in the western Mojave Desert, near Las Vegas, Nevada, and near St. George, Utah. Other parts of the population's range in the eastern Mojave Desert of California and Nevada are under similar threats, but the land use pressures are not as intense. Declining populations of tortoises have not been clearly documented in these parts of the population's range. The same threats responsible for documented declines in the western Mojave Desert are present, but are not as severe in the eastern Mojave.

There is little difference in the protection given to an endangered versus a threatened species under the Act. The Service does not believe that the threats faced by tortoises in the western Mojave and northeastern corner of the population's range are severe enough to warrant listing of the entire Mojave population as endangered. However, given the loss of a substantial number of tortoises due to the respiratory disease, loss and degradation of habitat over much of their range, and losses due to raven predation, some subpopulations may be extirpated within the near future. If the declining trend is not reversed, the Mojave population of the species may warrant reconsideration as endangered in the future.

Similarity of Appearance Treatment of the Sonoran Population

Section 4(e) of the Act, as amended, provides that the Secretary of the Interior may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered or threatened species even though it is not listed pursuant to section 4(a)(1) of the Act if he finds that: (a) Such species so closely resembles in appearance an endangered or threatened species that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of the Act.

The Service makes the following findings: (1) That there are no visual differences, readily discernible by law enforcement personnel or the general public, between the tortoises in the Mojave and Sonoran populations; (2) that the similarity of appearance represents an additional threat to the Mojave population; and (3) that treating the Sonoran population as threatened due to similarity of appearance, when located outside its natural range, would facilitate the enforcement of prohibitions under the Act regarding illegal trade in or possession of listed Mojave desert tortoises. Treating the Sonoran population as threatened due to similarity of appearance when outside its natural range would eliminate the necessity of Service special agents having to determine the origin of each desert tortoise prior to enforcing the prohibitions in section 9 of the Act. Inability of the Service to enforce the prohibitions in the Act would represent an additional threat to the listed Mojave population of the desert tortoise. By treating members of the Sonoran population of tortoises as threatened under the similarity of appearance provisions of the Act, when located outside their natural range, the Service believes that enforcement problems can be minimized, while at the same time, the conservation of listed Mojave populations can be ensured.

Status of the Beaver Dam Slope Subpopulation

The Beaver Dam Slope subpopulation of the desert tortoise in Utah was listed as threatened with critical habitat in 1980. Tortoises of the Beaver Dam Slope subpopulation that were in Nevada or Arizona were not listed as threatened. Publication of this rule recognizes the entire Beaver Dam Slope subpopulation as part of the Mojave population.

Monitoring of trend and other studies focused very narrowly on the Beaver Dam Slope in Utah as the only listed population (herein referred to as a subpopulation or portion of the Mojave Desert population).

A 50 percent population decline of the desert tortoise on a study plot on the Beaver Dam Slope, Utah, has been documented between 1981 and 1986. These data appear to be representative of a continuing decline of the entire Beaver Dam Slope subpopulation of Mojave desert tortoises. As discussed above, portions of the Mojave Desert population are under greater threat than others. The Service recognizes that portions of the population may become extirpated in the foreseeable future, but believes that these local extirpations do not constitute a large enough portion of the population's range to warrant listing as endangered. The Beaver Dam Slope subpopulation will retain its threatened status as part of the entire Mojave population, which is listed as threatened by this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Critical habitat was designated for the Beaver Dam Slope subpopulation of the Mojave desert tortoise in 1980. The status of this previously designated critical habitat does not change with this final rule. The Service finds that designation of critical habitat for the remainder of the Mojave desert population is not presently determinable. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

The range of the Mojave desert tortoise is extensive. Much of this habitat has been fragmented and degraded by a number of land-disturbing activities. Some remaining areas of good habitat are isolated from each other or are of such small size as not to support viable subpopulations of the tortoise. The specific size and partial configuration of these essential habitats, as well as vital connecting linkages between areas necessary for ensuring the conservation of the Mojave desert population throughout its range, cannot be determined at this time. Although the designation of critical habitat was raised by a number of those providing comments, no additional information was received that could contribute to determining critical habitat boundaries. These concerns will be considered as the Service addresses recovery of the population.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Such increased recognition and conservation efforts will provide a means to ensure survival for the Mojave

desert tortoise. Available funding will be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding will also be used for, but not necessarily limited to, the identification and isolation of healthy populations, carrying out predator control to reduce loss of immature tortoises, public education to discourage further releases of diseased captive tortoises, and addressing habitat issues including land acquisition, fencing, and habitat improvement.

The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At least 50 percent of occupied habitat within the range of the Mojave population of the desert tortoise is managed by the Bureau of Land Management. Other Federal managers of tortoise habitat include the Department of Defense, National Park Service, and the Fish and Wildlife Service. Tortoises are also found on lands managed by Indian tribes. Federal activities may include, but may not be limited to, actions resulting in grazing, ORV use, mining, construction of urban developments and rights-of-way, and military activities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may also be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species. The CITES Convention, as implemented by the Act and various regulations (50 CFR Part 23), imposes restrictions on importation and exportation of Appendix I and II species.

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the Mojave desert tortoise, are classified as a threatened species in the area north and west of the Colorado River and are protected under the Act.

Under Section 9(b)(1) of the Act, prohibitions applicable to the Mojave population do not apply to tortoises that were held in captivity or in a controlled environment prior to the date of the publication of the emergency rule (August 4, 1989), provided that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available, upon request, from the Office Supervisor, Ventura Field Station, 2140 Eastman Ave., Suite 100, Ventura, California 93003.

Authors

The primary authors of this final rule are Judy Hohman, Peter Stine, Ray Bransfield, Ventura Office, Southern California Field Station, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003, 805/644–1766 or FTS 983–6039; and Karla Kramer, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232–4181, (503) 231–6131 or FTS 429–6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Publ. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.11(h) is amended by revising the entry for "Tortoise, desert" under REPTILES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	
Tortoise, desert	*Gopherus* (=*Xerobates*, =*Scaptochelys*) *agassizii*	U.S.A. (AZ, CA, NV, UT), Mexico	Entire, except AZ, south and east of the Colorado River, and Mexico.	T	103, 357E, 378	17.95(c)	NA
Do	do	do	U.S.A. (AZ, south and east of Colorado River) and Mexico when found outside of AZ, south and east of Colorado River, and Mexico.	T(S/A)	357E, 378	NA	17.42(e)

3. § 17.42 is amended by adding a new paragraph (e) to read as follows:

§ 17.42 Special rules—reptiles.

* * * * *

(e) Desert tortoise (*Gopherus agassizii*)

(1) *Definition.* For the purposes of this paragraph (e) "desert tortoise" shall mean any member of the species *Gopherus agassizii*, whether alive or dead, and any part, product, egg, or offspring thereof, found outside of Arizona (south and east of the Colorado River) and Mexico, regardless of natal origin or place of removal from the wild.

(2) *Applicable provisions.* The provisions of § 17.31–17.32 shall apply to any desert tortoise subject to this paragraph (e).

Dated: March 29, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-7378 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 226 and 227

[Docket No. 90778-0079]

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

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

ACTION: Emergency interim rule.

SUMMARY: NMFS is publishing a new emergency rule to list the winter run of chinook salmon in the Sacramento River, California, as a threatened species under the Endangered Species Act (ESA) of 1973. NMFS first listed this species on an emergency basis on August 4, 1989. Since that time, NMFS has published a proposed rule to formally add the run to the list of threatened species (March 20, 1990—55 FR 10260). NMFS is publishing this new emergency listing to avoid a hiatus protection of the species until the formal listing process is completed. In 1989, the return of winter-run chinook salmon was estimated at only 500 fish which is 75 percent below a consistent run size of 2,000 to 3,000 fish in recent years.

This emergency rule includes a designation of critical habitat in a portion of the Sacramento River from Red Bluff Diversion Dam, Tehama County (River Mile 243) to Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom for the winter-run. This section includes the portion of the river in which suitable conditions can be maintained for spawning, incubating eggs, and rearing juvenile fish.

EFFECTIVE DATE: Winter-run chinook salmon in the Sacramento River are listed as threatened under the ESA and critical habitat is designated effective April 2, 1990 through November 28, 1990, or until the final listing is effective, which ever occurs first.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Branch, 300 South Ferry Street, Los Angeles, CA 90731, 213–514–6664 or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, 301–427–2322.

SUPPLEMENTARY INFORMATION:

Background

NMFS has been monitoring the status of the winter run of chinook salmon in the Sacramento River since the American Fisheries Society (AFS) petitioned NMFS to list the run in 1985. On February 17, 1987, NMFS published its determination that the listing was not warranted at that time (52 FR 6041). In response to severe environmental conditions created by drought in 1987 and 1988, NMFS reviewed its original determination to ensure that existing protective measures were providing protection for the run. On December 9, 1988 (53 FR 49722), NMFS published its determination that existing protective measures were mitigating the effects of the drought conditions. A major element of NMFS' consideration was that the run had stabilized at about 2,000 fish after nearly two decades of decline. However, in 1989, only 550 winter-run chinook returned to the Sacramento River, an additional decline of nearly 75 percent.

In response to this new decline, NMFS decided that immediate action was needed to bring the protective measures of the ESA to bear on the restoration of the run and published an emergency rule to list the run as a threatened species (54 FR 32085). NMFS will not complete the rulemaking process to add the species to the list of endangered species before the expiration of the emergency rule. Therefore, it is publishing a new emergency rule to ensure the run continues to receive the protection of the ESA while a listing determination is being made.

The 1989 run size was dangerously low, and the 1990 run may not be much larger since it was spawned during drought conditions in 1987. NMFS estimates that a run size of between 400 and 1,000 fish is necessary to maintain genetic diversity in the winter run population (52 FR 6041). If poor returns in 1990 and 1991 follow the poor return of 1989, NMFS believes the population may begin losing genetic diversity through genetic drift and inbreeding. Also, small populations are vulnerable to major losses from random environmental events such as droughts and El Niño events. Given the anticipated small return this year and continuing dry weather conditions, NMFS believes that an emergency situation continues to exist.

Available Conservation Measures

Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. One of the most useful protective measures is the section 7 consultation process which requires all Federal agencies to conduct

conservation programs for threatened and endangered species and to consult with NMFS regarding the potential effects of their actions on species under NMFS' jurisdiction.

When the emergency rule became effective, NMFS initiated section 7 consultations with the Federal agencies whose actions affect the winter run or adversely modify or destroy its critical habitat. NMFS has initiated consultations with the Bureau of Reclamation on operation of Red Bluff Diversion Dam, the Army Corps of Engineers on gravel mining and flood control operations, and the Pacific Fisheries Management Council on the effect of sport and commercial fishing. Under the new emergency rule, NMFS will continue consulting with these and other Federal agencies to ensure the protection of the run until the formal listing process is completed.

Also, NMFS will continue its coordination with the State of California in managing this run and its habitat. The State's Endangered Species Act contains a provision for interagency consultation among State agencies similar to section 7 of the Federal ESA. The State's Department of Fish and Game will be reviewing impacts of State actions on the winter run to see if there are actions beyond the Ten-point Restoration Plan that can be taken. Also, they will be reviewing the State's water projects for opportunities to improve water conservation, and they will be reviewing their own sport and commercial fishing regulations to ensure those fisheries will not jeopardize the continued existence of the winter run.

NMFS will also participate in the State's review of sport and commercial fishing regulations. NMFS is charged with implementing the Magnuson Fisheries Conservation and Management Act (MFCMA) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, interjurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the MFCMA and this includes the fisheries for Pacific salmon. The Pacific Fishery Management Council manages salmon fisheries off the coasts of Washington, Oregon, and California. Generally, the Council strives to manage the fishery by consensus among the Federal and state fishery management agencies so that state regulations in state waters are consistent with Federal regulations in Federal waters.

Through these consultations under the respective State and Federal laws, NFMS expects a State/Federal regulatory regime to be developed that will ensure the winter run population is not adversely affected by sport or commercial fishing. Therefore, NMFS is providing an exemption from the prohibition on taking of winter run chinook for fishermen who are fishing lawfully under State law or regulation or Federal regulations under the MFCMA.

NMFS retains its right and responsibility to exert Federal authority in State waters in the event the State develops fishing regulations that are less protective than is commensurate with the designation as a threatened species under the Federal ESA.

Critical Habitat

Section 4(a)(3)(A) of the ESA contains the requirement that critical habitat be designated concurrently with the determination that a species is an endangered species or is a threatened species. Therefore, as part of this emergency rule, NMFS is designating the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for the winter run of chinook salmon. This portion of the river contains almost all of the habitat in which winter run can spawn successfully, if water management strategies for maintaining suitable temperatures are implemented, and habitat in which most juvenile winter run will rear.

Section 4(b)(2) requires that economic impacts of specifying an area as critical habitat be considered in the process of designating critical habitat. NMFS is designating only that portion of the river that is necessary to ensure the survival and development of spawned eggs and successful rearing of juveniles during the 240 days the emergency rule is in effect. NMFS believes this is the minimum amount of habitat that is necessary to ensure the continued existence of the species. However, after NMFS evaluates other alternatives for critical habitat designation including habitat in which winter run has spawned successfully during exceptionally good water years, it plans to initiate a rulemaking to designate critical habitat.

The economic impacts of this designation are expected to affect only the Federal agencies operating in the river, primarily the Bureau of Reclamation and the Army Corps of Engineers. The emergency rule is not expected to diminish the amount of water that can be made available for irrigation. The worst case scenario would be unusually high temperatures and the resulting requirement that cold water be released to maintain temperatures below critical levels. This released water could be used downstream of the area designated as critical habitat for irrigation and other purposes.

Effects of Designating Critical Habitat

Federal agencies conducting, authorizing, or funding actions will incur additional administrative costs in conducting the evaluation of the effects of their actions on critical habitat. This expense will be minimal given that these agencies will be reviewing these same actions to assess their effects on the continued existence of the species.

The Bureau of Reclamation will be required to ensure that suitable water temperatures for winter run egg development and growth of juvenile fish are maintained in the portion of the critical habitat in which spawning is expected to occur. During the 1987–1988 drought, the Bureau took steps under the Cooperative Agreement to maintain suitable water temperatures between Keswick Dam and Cottonwood Creek (approximately 14 river miles above Bend Bridge). Generally, about 80 percent of the run spawns above Cottonwood Creek. The major action implemented by the Bureau was using the low level outlet for releasing water from Shasta Lake. This was done for the first time in 1987 and again in 1988. Because the low level outlet is below the outlet that runs water to the powerhouse, it releases cold deep water during periods of the year when the powerhouse outlet is draining warmer water nearer the surface. While the low level outlet releases cold water to the benefit of the winter run, the water bypasses the powerhouse and no power can be generated from the release of that water. Between July 21 and September 17, 1988, the Bureau released almost 400,000 acre-feet of water through the low level outlet at the expense of $3.65 million in foregone power revenues. Conditions in 1989 were not as severe, but the Bureau did release water through the low level outlet at the expense of $1.4 million.

The Bureau is expected to raise the gates in the Red Bluff Diversion Dam on December 1, 1989, and keep them raised through April 1, 1990, consistent with past performance under the Cooperative Agreement implementing the Ten-point Winter Run Restoration Plan. This will facilitate passage of juvenile fish downstream in December and provide access for adults to critical habitat. Because this activity occurs during the non-irrigation season, it is not expected

to affect agricultural operation dependent on water diverted at the Red Bluff Diversion Dam.

Since the Bureau has previously agreed to conserve winter run habitat by raising the gates at Red Bluff Diversion Dam and by maintaining suitable temperatures and because failure to conduct these actions could adversely modify critical habitat, NMFS has determined that the economic impact of these actions to the Bureau does not outweigh the benefits to be derived from implementing measures to conserve the winter run's spawning habitat during the 240 days the emergency rule is in effect.

The emergency situation brought on by the poor return of spawning adults in 1989 precludes the opportunity for completing a more detailed economic analysis. Other Federal actions such as consideration of the City of Redding's Federal Energy Commission applications are not likely to progress to the point that resources will be irreversibly or irretrievably committed during the 240 days this emergency rule is in effect. Therefore, these actions were not considered in this brief economic assessment.

A complete economic analysis of the impact of designating critical habitat will be included in the proposed rule NMFS plans to issue for designating critical habitat.

Classification

Since the Assistant Administrator for Fisheries, NOAA, has determined that the present situation poses a significant risk to the well-being of the Sacramento River winter-run chinook salmon, emergency regulations can be issued under 16 U.S.C. 1533(b)(7).

The Assistant Administrator finds that reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under sections 553 (b) and (d) of the Administrative Procedures Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because as an emergency rule, it is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedures Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has been or will be prepared.

National Environmental Policy Act

The National Oceanic and Atmospheric Administration (NOAA) has determined that certain categories of its activities do not normally have the potential for a significant effect on the human environment and are, therefore, exempt from the requirement for preparation of either an environmental assessment or an environmental impact statement (NOAA Directives Manual 02–10 5c(3)). Listing actions under section 4(a) of the ESA and designation of critical habitat are among those actions NOAA has determined are exempted (NOAA Directives Manual 02–10 5c(3)(h)). The main environmental impact from this emergency rule will be modification of water temperatures in the area designated as critical habitat for the benefit of incubating winter-run eggs and developing young. This is not expected to produce a significant impact to the human environment.

List of Subjects in 50 CFR Parts 226 and 227

Designated critical habitat and threatened fish and wildlife.

Dated: March 27, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

Accordingly, parts 226 and 227 of chapter II of title 50 of the Code of Federal Regulations are amended as follows.

PART 226—[AMENDED]

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

Subpart C—Critical Habitat for Marine and Anadromous Fish

2. The title of subpart C under part 226 is revised to read as set forth above.

3. Section 226.21 under subpart C is added to read as follows:

§ 226.21 Sacramento River California winter-run chinook salmon (Oncorhynchus tshawytscha).

The Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zone, the water, and the river bottom.

PART 227—[AMENDED]

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.

2. Section 227.4 under subpart A is amended by revising paragraph (e) from April 2, 1990 through November 28, 1990, to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

3. The title of subpart C under part 227 is amended April 2, 1990 through November 28, 1990, to read as follows:

Subpart C—Threatened Marine and Anadromous Fish

4. Section 227.21 of subpart C is revised April 2, 1990 through November 28, 1990, to read as follows:

§ 227.21 The Sacramento River winter-run chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon for the 240-day period the emergency rule is in effect.

(b) *Exceptions.* (1) The exceptions under section 10 of the Act (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species and exceptions relating to endangered species under the regulations, such as the provisions of part 222, subpart C—Endangered Fish or Wildlife Permits, also apply to the Sacramento River winter-run chinook salmon for the 240-day period the emergency rule is in effect.

(2) Any acts involving winter-run chinook salmon which were taken lawfully under a State of California fishing law or regulation, or which were taken lawfully under a fishing regulation under the Magnuson Fisheries Conservation and Management Act. There shall be a rebuttable presumption that the winter-run chinook salmon involved in any acts are not entitled to the exemption contained in this subsection.

[FR Doc. 90–7500 Filed 3–28–90; 2:33 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 63
Monday, April 2, 1990

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1714

Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII by adding part 1714, Electric Rates, Services and Contracts consisting of subpart E—Federal Pre-emption in Rate Making in connection with the Power Supply Borrowers. This new part will establish policies and procedures to implement certain provisions of (a) the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"); and (b) REA loan documents, including wholesale power contracts between the power supply borrowers and their members, which provide, among other matters, for the establishment of rates for the sale of electric power and energy by power supply borrowers. This part will address the pre-emption under certain circumstances of the regulation of power supply borrowers' rates by State Regulatory Authorities and the assumption of exclusive jurisdiction over rates by REA.

DATES: Written comments must be received by REA no later than June 1, 1990.

ADDRESSES: Submit written comments to Mr. Archie W. Cain, Director, Electric Staff Division, Rural Electrification Administration, room 1246, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. Comments may also be inspected at room 1246 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 382–9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby proposes to amend 7 CFR chapter XVII by adding part 1714, Electric Rates, Services and Contracts and by adding, subpart E—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers.

This regulation will be issued in conformity with Executive Order 12291, Federal Regulations. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, state, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity; and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this proposed rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR part 3015 subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

The reporting and/or recordkeeping requirements contained in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). They will not be effective until approved by OMB.

The public reporting burden for this collection of information is estimated to average 5.5 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, Office of Information Resources Management, room 404–W, Washington, DC 20250 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

This proposed regulation, 7 CFR part 1714, Subpart E—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers is related in subject matter to a proposed rule, 7 CFR 1714, Subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy, which is being published elsewhere in today's **Federal Register**. Interested parties should refer to such proposed subpart I and, in particular, the "Background" paragraphs for further discussion of the structure of the REA program and the circumstances which give rise to both proposed rules. While subpart I and this subpart E are related in subject matter, this rule addresses the matter of pre-emption of State Regulatory Authority jurisdiction over the rates of power supply borrowers. This rule can be implemented separately and is being promulgated separately.

The Rural Electrification Administration (REA) was established pursuant to the RE Act, for the purpose of providing loans to bring central station electric service to persons in rural areas. Since its inception, REA has provided approximately $21 billion in loans and $31 billion in loan guarantees to its electric borrowers through an organizational and financing structure which is unique in the utility industry. This structure was designed to ensure that loans made or guaranteed by REA are repaid, and to ensure that the security for those loans is reasonably adequate at the same time it enables RE Act beneficiaries, the citizens of rural America, to receive electric service at rates which are as low as possible.

REA electric borrowers are, for the most part, not-for-profit cooperatives, organized on a two tier system. Currently, approximately 889 distribution borrowers provide retail electric service to their consumer-

owners, while some 60 power supply borrowers provide wholesale service to their member distribution systems.

The 600 distribution borrowers which are member-owners of power supply borrowers are tied to their power supply systems through long term wholesale power contracts. As a condition to providing financial assistance under the RE Act to power supply borrowers REA requires the power supply borrower and its member-owners to execute these wholesale power contracts. Pursuant to the wholesale power contract, the member agrees to take all of its power requirements from the power supply system and to pay for the power at rates which are sufficient, but only sufficient, to meet,

> * * * the cost of the operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant transmission system and related facilities of the Seller, the cost of any power and energy purchased for resale hereunder by the Seller, the cost of transmission service, make payments on account of principal and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. (Section 4. Rates (b), REA Form 444, "Wholesale Power Contract—Federated Cooperative"; Rev. 6–60).

The wholesale power contract is essential to carrying out the REA program. Section 4 of the RE Act (7 U.S.C. 904) requires that the Administrator determine that loans will be repaid within the time agreed and that security for the loans is reasonably adequate. The Administrator relies on the wholesale power contract in fulfilling this statutory requirement. These wholesale power contracts provide the Administrator with the assurance that there will be a market for the power produced by the power supplier and that the power supplier will generate revenues adequate to meet all its costs including repayment of the loans made or guaranteed by REA. The terms of the wholesale power contracts provide that the Administrator shall approve any changes in rates charged by the power supply borrower.

The wholesale power contracts are pledged to REA and REA is a third party beneficiary of the contracts. In a number of different contexts, the validity of the wholesale power contract has been repeatedly upheld by courts which recognize its importance to the REA program. See, for example, *Alabama Power Co.* v. *Alabama Electric Cooperative, Inc.*, 394 F.2d 672 (5th Cir.), *cert. denied*, 393 U.S. 1000 (1968) (requirement that borrowers enter into contracts is within REA Administrator's discretion; contracts are immune from antitrust liability); *Greensboro Lumber Co.* v. *Georgia Power Co.*, 844 F.2d 1538 (11th Cir. 1988), *affirming* 643 F.Supp. 1345 (N.D. Ga. 1986) (contracts are immune from antitrust scrutiny and liability under the Public Utilities Regulatory Policies Act); *United States* v. *Southwestern Electric Cooperative, Inc.*, 663 F.Supp. 538 (S.D. Ill. 1987) *affirmed* 869 F.2d 310 (7th Cir. 1989) (Government has standing to bring declaratory judgment proceeding to declare all requirements contract enforceable); *United States* v. *Coosa Valley Electric, Inc.*, No. 85–C–0515–S (N.D. Ala. 1986) (all requirements contracts are immune from antitrust liability, contracts were upheld over state law contractual defenses of fraud, duress, mutual mistake, unilateral mistake, waiver, frustration of purpose, and failure of consideration); *Tri-State G&T Ass'n* v. *Shoshone River Power & Light*, 874 F.2d 1346 (10th Cir. 1989) (all requirements contract obligates a distribution member to maintain its power requirements and remain in business throughout the term of the contract). In these and other decisions, courts have consistently recognized the uniqueness of the organizational and financing structure of the rural electrification program and upheld the wholesale power contract, finding it enforceable notwithstanding, among other matters, state laws.

Also unique to the REA power supply program is the role REA plays in the operations of the borrower. The REA mortgage, loan contract and wholesale power contract provide REA with many rights, among which are the rights to (a) approve the construction and operation of additions or extensions to a borrower's system; (b) approve contracts into which the borrower may wish to enter, including contracts for the purchase and sale of electric energy; and (c) approve changes in the rates the borrower charges for the sale of electric power and energy.

Indeed, it is this extensive and unique relationship between REA and its borrowers, together with the not-for-profit nature of the cooperatives, which led the Federal Power Commission (FPC)—now the Federal Energy Regulatory Commission—to conclude that rural electric cooperatives are not subject to regulation under the Federal Power Act. See *Dairyland Power Cooperative*, 37 F.P.C. 12 (1967), *aff'd sub nom., Salt River Project* v. *FPC*, 391 F.2d 470 (D.C. Cir.), *cert. denied*, 393 U.S. 857 (1968). The D.C. Circuit Court in affirming the decision of the FPC stated that,

> REA regulation and supervision of cooperatives are, in many respects, far more comprehensive than those which the Federal Power Commission exercise over investor-owned utilities * * * *Salt River Project*, 391 F.2d at 473.

Notwithstanding the overriding Federal interests in carrying out the REA program and the not-for-profit structure of REA borrowers, some State Regulatory Authorities exercise jurisdiction over REA borrowers. Indeed, Congress recognized that State Regulatory Authorities have an appropriate role in the REA power supply program. Section 4 of the RE Act (7 U.S.C. 904) provides that no loans for the construction, operation or enlargement of any generating plant shall be made, unless the consent of any applicable State Regulatory Authority is first obtained.

Consequently, REA does not finance facilities for power supply borrowers without the required approvals of all State Regulatory Authorities. Furthermore, some State Regulatory Authorities after having approved an REA loan or REA financed project, have continued to exercise jurisdiction over the rates charged by power supply borrowers. For the most part, such rate jurisdiction has been exercised in a manner consistent with protecting the Federal interests, in particular, repayment of loans made or guaranteed by REA. In almost all cases, such State Regulatory Authorities have approved rates that are sufficient to allow the borrower to repay REA loans and there has been no conflict between Federal and state interests. Currently, the regulatory authorities of 11 states assert jurisdiction over the wholesale electric rates of 20 REA-financed rural electric power supply systems.

In recent years, with some power supply borrowers facing significant rate increases, it has become clear that opportunities exist for conflict between the State Regulatory Authority and the interests of the Federal Government. It appears that, because of their interests in keeping rates to consumers low, some State Regulatory Authorities may be tempted to shift costs from the consumer to REA and the Federal tax-payer by refusing to approve rate increases required by the terms of the wholesale power contract and necessary to repay REA loans.

For example, REA has faced one situation in which a State Regulatory Authority consented to REA loans to construct a generating facility and simultaneously approved the wholesale power contract which the Administrator relied upon to make the findings of

repayment and adequate security required by section 4 of the RE Act (7 U.S.C. 904). After the REA loans were advanced, the State Regulatory Authority refused to approve rate increases required by the wholesale power contract and necessary to repay the REA loans even though the power supply borrower's members are economically capable of paying the rates.

The State Regulatory Authority chose to treat the borrower as it might a conventional investor owned utility apparently ignoring certain fundamental differences between REA-financed cooperatives and investor owned utilities. Investor owned utilities are owned and controlled by shareholders, while cooperatives are owned and controlled by their consumers who elect directors through a democratic process at both the distribution and power supply level. In light of this difference, the regulation of a cooperative does not require this same balancing of interests and allocation of risks between the investor and the consumer that exists in the regulation of an investor owned utility—under certain circumstances sound public policy may require quite a different approach in the regulation of cooperative as opposed to investor owned utilities. Not only did the State Regulatory Authority ignore the fundamental difference between cooperatives and investor owned utilities, but also it failed to recognize important Federal interests involved including repayment of REA loans, and in effect sought to shift costs from the consumer owner to the Federal Government and the Federal taxpayer. This action frustrates the RE Act; and it results in the depletion of the Rural Electrification and Telephone Revolving Fund which was established by Congress to fund the REA loan program nationwide. If such actions were sanctioned, then the REA program could not operate in the manner Congress intended, and in light of the requirements of section 4 of the RE Act (7 U.S.C. 904), the Administrator could not continue to make loans relying on the structure of the power supply program which has been serving rural America for 50 years. Consequently, such actions by State Regulatory Authorities must be pre-empted under the RE Act if Federal interests are to be protected.

The Supreme Court, in *Arkansas Electric Cooperative Corp.* v. *Arkansas Public Service Commission*, 461 U.S. 375 (1983), recognized that State Regulatory Authorities' jurisdiction over an REA borrower's rates may be pre-empted by the RE Act. The court stated that:

> The [state regulatory authority] can make no regulation affecting rural power cooperatives which conflicts with particular regulations promulgated by the REA. Moreover, even without an explicit statement from the REA, a particular rate set by the [state regulatory authority] may so seriously compromise important federal interests, including the ability of the [borrower] to repay its loans, as to be implicitly pre-empted by the Rural Electrification Act. (p. 390)

The purpose of the proposed regulation is to set forth certain circumstances when a State Regulatory Authority's jurisdiction over the rates of a power supply borrower conflicts with important Federal interests and therefore is pre-empted by the RE Act.

REA wishes to stress its view that, while opportunities exist for conflict between State Regulatory Authorities and Federal interests, in almost all cases conflict can be avoided through cooperation among the interested parties.

Even when faced with a borrower in default and experiencing extreme financial problems, REA and a State Regulatory Authority have been able to resolve the problems in a way that protects Federal interests and is satisfactory to the State Regulatory Authority. See *In the Matter of an Investigation of Big Rivers Electric Corporation's Rates for Wholesale Electric Service*, 89 PUR 4th 499 (Ky. 1987), in which the Kentucky Public Service Commission stated,

> This case illustrates the importance of cooperative federalism in resolving difficult problems of this kind. The respective duties of the REA and state regulatory commission may sometimes appear to conflict. In the case of a troubled utility, however, the overriding aim of both these bodies is the same: to craft a plan that recognizes federal interests yet fairly balances the needs of the utility and its customers. In reaching a solution, there must be a full measure of cooperation among state regulators and federal authorities, working with the utility, its members, and customers. (p. 510).

REA strongly encourages such cooperation and believes that with cooperation, in most cases Federal interests can be protected consistent with state interests. Only in very rare cases will a State Regulatory Authority's jurisdiction over the rates of power supply borrowers compromise Federal interests and be pre-empted under the RE Act and this proposed regulation.

It is not the intent of the proposed regulation to address all circumstances where state law or the actions of a State Regulatory Authority may be pre-empted by the RE Act. For example, the regulations do not address the condemnation of a borrower's property under state law (see *Public Utility District No. 1 of Pend Oreille County* v. *United States*, 417 F.2d 200 (9th Cir. 1969) and *Public Utility District No. 1 of Franklin County* v. *Big Bend Electric Cooperative*, 618 F.2d 601 (9th Cir. 1980)); or the jurisdiction of a State Regulatory Authority should REA acquire title to the borrower's plant (see *Public Service Co. of Ind* v. *Hamil*, 416 F.2d 648 (7th Cir. 1969), *cert. denied*, 396 U.S. 1010 (1970)). Also, except as set forth in § 1714.507, the proposed rule does not address the pre-emption of state regulatory jurisdiction over distribution members of a power supply borrower.

The regulation addresses pre-emption in only those certain specific circumstances identified. The proposed regulation is not intended to and does not limit in any manner the pre-emption of state law and actions of State Regulatory Authorities, whether that pre-emption be implicit or explicit under the RE Act.

The following is a brief discussion of certain significant provisions of the proposed regulation. Unless otherwise indicated, all terms shall have the meanings set forth in the regulation.

Section 1714.503, Requirements of REA Documents, provides that power supply borrowers shall set rates as required by the REA documents. The rate provisions of the REA wholesale power contract require the power supply borrower to set rates to generate sufficient revenues to meet the borrower's costs including payments on account of all indebtedness and require the member to pay for power and energy at such rates. The REA wholesale power contract and other REA documents are the mechanisms REA and the borrowers rely upon in carrying out the rural electrification program. The proposed regulation allows for the power supply borrower to comply with and REA to enforce the requirements of the REA documents by pre-empting a State Regulatory Authority's jurisdiction under certain circumstances.

Section 1714.504, State Regulatory Authority Rate Jurisdiction, sets forth the obligation of power supply borrowers to seek rate approval from State Regulatory Authorities. As set forth in this section, REA will cooperate with the State Regulatory Authority in connection with the rate application. As discussed above, REA believes most potential conflicts between the interests of State Regulatory Authorities and Federal interests can be avoided if the involved parties are willing to cooperate.

Section 1714.505, Pre-emption, provides for pre-emption of State

Regulatory Authority jurisdiction over a power supply borrower's rates based on a two prong test: First, if the approved rates are inadequate to permit the borrower to make payments on secured loans and, second, if the borrower has defaulted or will default on secured loans. It should be noted that the term "secured loans" includes any debt secured under the REA mortgage, and may include debt evidencing loans from third party lenders which REA has lien accommodated pursuant to the RE Act. Such loan funds are used to carry out RE Act purposes and, by the terms of the REA mortgage, any default on such loans also constitutes a default on REA loans. Consequently, such third party loans are treated the same as loans made or guaranteed by REA.

Section 1714.506, Exclusive REA Rate Jurisdiction, provides for the manner in which REA, upon pre-emption, will exercise exclusive rate jurisdiction. Borrowers are required to establish rates as provided in the REA wholesale power contract and other REA documents. If a borrower fails to comply with the provisions of its REA documents, REA shall proceed to enforce those contractual obligations by exercising any rights and remedies available, including without limitation, suits for specific performance. It should be noted that the REA mortgage (Article II, Section 15 or its equivalent) and other REA documents may make certain rate requirements subject to the orders of regulatory bodies, including State Regulatory Authorities. Upon pre-emption under these regulations, REA shall have exclusive jurisdiction over rates, and the rate requirements of the mortgage and REA documents shall no longer be subject to the orders of State Regulatory Authorities.

Section 1714.507, Distribution Members Rates, provides that State Regulatory Authorities which have been pre-empted, as provided in the regulations, may continue to exercise rate jurisdiction over distribution members. The section is not intended to, and does not limit pre-emption of State Regulatory Authority jurisdiction over distribution borrowers. As the Supreme Court has stated in the *Arkansas Electric* case, *supra*, such jurisdiction may be pre-empted explicitly or implicitly by the RE Act. The section is intended only to clarify that such rate jurisdiction over distribution members will not necessarily be pre-empted as a consequence of the pre-emption of rate jurisdiction over a power supply borrower as provided in the regulations. The section also provides that the State Regulatory Authority shall pass through the power supply borrower's rates in determining rates for distribution members. This is consistent with the long established "filed rate" doctrine under which interstate power rates filed with or fixed by the Federal Energy Regulatory Commission must be given binding effect by State Regulatory Authorities in determining intrastate rates. See *Miss. Power & Light* v. *Miss. Ex Rel. Moore*, 108 S.Ct. 2428 (1988); *Nantahala Power & Light Co.* v. *Thornburg*, 106 S.Ct. 1249 (1986). Similarly when REA has, as a consequence of pre-emption, exclusive rate jurisdiction, and approves a rate, just as when FERC sets a rate between a seller of power and a wholesaler-as-buyer, a State Regulatory Authority may not exercise its jurisdiction over retail sales in such a manner as to prevent the power supplier from recovering the costs of paying the approved rate.

Section 1714.508, REA Approval of Nonconforming Rates, provides that REA may approve rates that do not conform with the requirements of the REA wholesale power contract and other REA documents when such approval is in the interests of REA. For example, REA may permit a power supply borrower which is facing financial problems and load losses because of high rates to lower its rates thereby maximizing the long term recovery of REA. Such modification shall not affect pre-emption of the State Regulatory Authority as provided in the regulations.

Section 1714.509 Additional Statutory Pre-emption sets forth the limited scope of the regulations and has been discussed earlier.

List of Subjects in 7 CFR Part 1714

Administrative practice and procedure, Electric power rates, Electric utilities, Federal pre-emption, Guaranteed loans, Loans programs—energy, Wholesale power contracts.

In view of the above, REA proposes to amend 7 CFR chapter XVII by adding part 1714, to read as follows:

PART 1714—ELECTRIC RATES, SERVICE AND CONTRACTS

Subpart A—Area Coverage [Reserved]

Subpart B—Electric Retail Rates [Reserved]

Subpart C—Service to Large Power Loads [Reserved]

Subpart D—[Reserved]

Subpart E—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers

Sec.

1714.500 Purpose.
1714.501 Policy.
1714.502 Definitions and Rules of Construction.
1714.503 Requirements of REA Documents.
1714.504 State Regulatory Authority Rate Jurisdiction.
1714.505 Pre-emption.
1714.506 Exclusive REA Rate Jurisdiction.
1714.507 Distribution Members' Rates.
1714.508 REA Approval of Nonconforming Rates.
1714.509 Additional Statutory Pre-emption.

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A—Area Coverage [Reserved]

Subpart B—Electric Retail Rates [Reserved]

Subpart C—Service to Large Power Loads [Reserved]

Subpart D—[Reserved]

Subpart E—Federal Pre-emption in Rate Making in Connection With Power Supply Borrowers

§ 1714.500 Purpose.

This subpart contains regulations of the Rural Electrification Administration (REA) implementing provisions of sec. 4 of the RE Act (7 U.S.C. 904) which authorize the Administrator to establish terms and conditions of loans and implementing provisions of the REA documents which provide for the establishment of rates to be charged by power supply borrowers for the sale of electric power and energy. This subpart contains the general regulations of REA for the pre-emption, under certain circumstances, which are not exclusive, of the regulation of a power supply borrower's rates by a State Regulatory Authority under State law and for the exercise of exclusive jurisdiction over rates by REA.

§ 1714.501 Policy.

(a) REA's makes and guarantees loans to borrowers to bring electric service to persons in rural areas. REA requires, as a condition to making or guaranteeing any loans to power supply borrowers,

that the borrower enter into REA wholesale power contracts with its several members and assign and pledge such contracts as security for the repayment of loans made or guaranteed by REA and for other loans which, pursuant to the RE Act, REA has permitted to be secured pursuant to the REA mortgage. The REA wholesale power contract requires, among other matters, that the rates charged for power and energy sold thereunder produce revenues sufficient to enable the power supply borrower to make payments on account of all indebtedness of the power supply borrower. The Administrator relies upon the REA wholesale power contracts together with other REA documents to find and certify, as required in sec. 4 of the RE Act (7 U.S.C. 904), that the security for the loan is reasonably adequate and the loan will be repaid within the time agreed.

(b) REA requires power supply borrowers to take such actions as may be necessary to charge rates for the sale of electric power and energy which are sufficient to pay the principal and interest on loans made or guaranteed by REA in a timely manner and to meet the requirements of the REA wholesale power contract and other REA documents.

(c) With respect to power supply borrowers which are not subject to rate regulation by a State Regulatory Authority, REA requires that such borrowers establish rates and obtain REA approval of such rates as required by the terms of the REA wholesale power contract and other REA documents.

(d) With respect to power supply borrowers which are subject to regulation by a State Regulatory Authority, REA does not make or guarantee a loan for the construction, operation or enlargement of any generating plant or transmission facility unless the consent of the State Regulatory Authority having jurisdiction in the premises is first obtained. Further, REA permits State Regulatory Authorities to regulate, pursuant to applicable provisions of state law, the rates charged by power supply borrowers under the REA wholesale power contract so long as the rates approved are sufficient to provide for repayment of secured loans and do not otherwise compromise Federal interests.

(e) REA exercises exclusive jurisdiction over the rates charged by a power supply borrower in those circumstances where the Administrator has determined that State Regulatory Authority rate jurisdiction compromises Federal interests, including without limitation the ability of the power supply borrower to repay its secured loans.

§ 1714.502 Definitions and rules of construction.

(a) *Definitions.* For the purpose of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of REA.

Borrower means any organization which has an outstanding loan made or guaranteed by REA for rural electrification. Unless otherwise stated in the text, "borrower" shall mean power supply borrower.

Loan contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

Power supply borrower means any borrower engaged in the wholesale sale of electric power and energy to distribution members pursuant to REA wholesale power contracts.

RE Act means Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA means Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA documents means the loan contract, mortgage and REA wholesale power contract of a power supply borrower.

REA mortgage means the mortgage and security agreement, as from time to time supplemented, amended and restated, made by and among the borrower, REA, and, if a party thereto, third party lenders securing the payment of outstanding loans made or guaranteed by REA and other lenders.

REA wholesale power contract means the contract for the wholesale sale of electric power and energy between a power supply borrower and its distribution member as approved by REA.

Secured loans shall mean outstanding loans secured pursuant to the REA mortgage.

(b) Rules of Construction.

Unless the context shall otherwise indicate, the terms defined in § 1714.502(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," and "hereunder", and words of similar import, refer to this subpart as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

§ 1714.503 Requirements of REA Documents.

(a) Pursuant to the terms of the REA documents each power supply borrower shall establish and adjust rates for the sale of electric power and energy in such manner as to assure that the borrower will be able to make required payments on secured loans.

(b) Pursuant to the terms of the REA wholesale power contract, the Board of Directors of the power supply borrower shall review rates not less frequently than once each calendar year and revise its rates as therein set forth.[1] The REA wholesale power contract further provides that the borrower shall notify the Administrator not less than 30 nor more than 45 days prior to the effective date and shall set forth the basis upon which the rate is to be adjusted and established. No proposed revision in rates shall be effective unless approved in writing by the Administrator.

(c) Pursuant to the terms of the REA mortgage, each power supply borrower must design its rates as therein set forth and must give 90 days prior notice to REA of any proposed change in its general rate structure.

§ 1714.504 State Regulatory Authority rate jurisdiction.

(a) In the event that rate revisions required by the terms of the REA wholesale power contract or other REA documents may be subject to the approval of a State Regulatory Authority, the power supply borrower shall seek such required approval in a timely manner.

(b) REA recognizes the need of State Regulatory Authorities for documents, information and records for use in connection with an application for rate approval and will consider any reasonable request by a borrower or a State Regulatory Authority for such documents, information and records. The failure of REA to provide requested documents, information or records shall not limit any rights of REA including the right to exercise exclusive rate jurisdiction as provided in this subpart.

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[1] The Wholesale Power Contract, with minor modifications which are approved by REA on a case by case basis, provides that the rate charged for electric power and energy, shall produce revenues which shall be sufficient, but only sufficient, with the revenues of the Seller from all other sources, to meet the cost of the operation and maintenance (including without limitation, replacements, insurance, taxes and administrative and general overhead expenses) of the generating plant transmission system and related facilities of the Seller, the cost of any power and energy purchased for resale hereunder by the Seller, the cost of transmission service, make payments on account of principal and interest on all indebtedness of the Seller, and to provide for the establishment and maintenance of reasonable reserves. (Section 4. Rates (b), REA Form 444, "Wholesale Power Contract—Federated Cooperative"; Rev. 6–60).

(c) In the event that the State Regulatory Authority shall fail to act favorably upon the borrower's application for rate increases required by terms of the REA wholesale power contract or other REA documents, the borrower shall pursue such legal and administrative appeals as may be available unless REA shall approve otherwise in writing.

§ 1714.505 Pre-emption.

State Regulatory Authority jurisdiction over a power supply borrower's rates shall be pre-empted by the RE Act and REA shall assume exclusive jurisdiction over the borrower's rates if the Administrator shall have determined, in his sole discretion, that:

(a) Rates approved by the State Regulatory Authority are, after taking into account the borrower's costs and expenses, inadequate to produce revenues sufficient to permit the borrower to make required payments on the secured loans and

(b) The borrower has failed or will fail to make required payments on secured loans.

The Administrator shall, upon making such determination, notify the borrower and the State Regulatory Authority in writing that REA has exclusive jurisdiction over rates of the borrower.

§ 1714.506 Exclusive REA rate jurisdiction.

(a) Upon the pre-emption of State Regulatory Authority as provided in this subpart, REA will exercise exclusive jurisdiction over the rates of the borrower. The borrower shall immediately establish rates with the approval of REA that are sufficient to satisfy the requirements of the REA wholesale power contract and other REA documents described in § 1714.503 of this subpart. The borrower shall establish such rates notwithstanding provisions of state law, and rules, orders or other actions of State Regulatory Authorities, and notwithstanding any provision of the REA documents referring to such laws, rules, orders or actions.

(b) So long as the State Regulatory Authority shall be pre-empted hereunder, REA shall be considered the regulatory body with jurisdiction over rates for the purposes of the REA documents and for the purposes of sec. 1129(a)(6) of the Bankruptcy Code of 1978, as amended (11 U.S.C. 1129(a)(6)).

(c) If a borrower, which is subject to exclusive REA rate jurisdiction, shall fail to establish rates in accordance with the terms of the REA wholesale power contract and other REA documents in a timely fashion, REA shall proceed to exercise any and all rights and remedies available pursuant to the REA documents or otherwise.

(d) REA will continue to exercise exclusive jurisdiction over the rates of the borrower until the Administrator shall in writing approve the resumption of jurisdiction by the State Regulatory Authority. The Administrator shall approve resumption only after determining, in his sole discretion, that such jurisdiction shall be exercised in a manner consistent with Federal interests.

§ 1714.507 Distribution members' rates.

A State Regulatory Authority which has been pre-empted as provided in this subpart may continue to exercise jurisdiction over the rates of distribution members of the power supply borrower: Provided, however, that the State Regulatory Authority shall treat any REA approved rate for the power supply borrower as fair and reasonable and shall not in any manner, directly or indirectly, prevent or impede the distribution member from recovering the costs of paying the REA approved rates to the power supply borrower.

§ 1714.508 REA approval of nonconforming rates.

Borrowers may request and REA may approve rates which do not conform with the requirements of the REA wholesale power contract and other REA documents if REA determines, in its sole discretion, that such approval is in the interests of REA. If REA approval is granted prior to pre-emption hereunder, and if the State Regulatory Authority shall have approved such rates, then, so long as REA's approval of the nonconforming rates remains in effect, the jurisdiction of the State Regulatory Authority over the rates of the borrower shall not be pre-empted hereunder.

§ 1714.509 Additional statutory pre-emption.

This subpart addresses pre-emption of state law and State Regulatory Authority in only those specific circumstances herein described. Nothing in this subpart waives, limits, or otherwise affects the explicit pre-emption or pre-emption, which is implicit and shall occur pursuant to the RE Act as a matter of law, of state law or action of a State Regulatory Authority where such state law or such action compromises Federal interests, including the ability of any borrower, including power supply borrowers, to repay loans made or guaranteed by REA.

Dated: March 9, 1990.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90-7410 Filed 3-29-90; 8:45 am]

BILLING CODE 3410-15-M

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7 CFR Part 1714

Federal Pre-emption in Rate Making in Connection With REA Electric Borrowers in Bankruptcy

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend 7 CFR chapter XVII, part 1714, Electric Rates, Services and Contracts and by adding a new subpart, subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy. This new subpart will establish policies and procedures to implement certain provisions of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the "RE Act"); and the REA loan documents which provide for the establishment of rates for the sale and purchase of electric power and energy by REA electric borrowers. This subpart will also establish certain circumstances under which the jurisdiction by State Regulatory Authorities over the rates of an REA financed electric system in bankruptcy shall be pre-empted by REA.

DATES: Written comments must be received by REA no later than June 1, 1990.

ADDRESSES: Submit written comments to Mr. Archie W. Cain, Director, Electric Staff Division, Rural Electrification Administration, Room 1246, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500. Comments may also be inspected at Room 1246 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence V. Bladen, Financing Policy Specialist, Rural Electrification Administration, Room 1272, South Building, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-9558.

SUPPLEMENTARY INFORMATION: Pursuant to the RE Act, REA hereby proposes to amend 7 CFR chapter XVII by adding part 1714, Electric Rates, Services and Contracts and by adding subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy.

This regulation will be issued in conformity with Executive Order 12291, Federal Regulations. It will not (1) have an annual effect on the economy of $100 million or more; or (2) result in a major increase in costs or prices for consumers, individuals, industries, Federal, State, or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity; and has been determined not to be "major".

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this proposed rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR 3015 subpart V in 50 FR 47034, (November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

This proposed rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Background

This proposed rule, Subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy, is related in subject matter to a proposed rule, 7 CFR 1714, Subpart E—Federal Pre-emption in Rate Making in Connection with Power Supply Borrowers, which is being published elsewhere in today's **Federal Register**. Interested parties should refer to such proposed subpart E and, in particular, the "Background" paragraphs for further discussion of the structure of the REA program and the circumstances which give rise to both proposed rules. While subpart E and this subpart I are related in subject matter, this rule addresses the matter of pre-emption of State Regulatory Authority jurisdiction over any REA electric borrower, either distribution or power supply, which is in bankruptcy. This rule can be implemented separately and is being promulgated separately.

REA was established pursuant to the RE Act for the purpose of providing loans to bring central station electric service to persons in rural areas. REA loans and loan guarantees are funded through the Rural Electrification and Telephone Revolving Fund (Revolving Fund), the assets of which consist principally of notes and other obligations evidencing loans made by REA to its borrowers and the proceeds from such obligations. REA provides loans to its electric borrowers, which for the most part are not-for-profit cooperatives, through an organizational and financing structure which is unique in the utility industry. (See proposed rule 7 CFR 1714, subpart E.) This structure was designed to ensure that loans made or guaranteed by REA are repaid, and to ensure that the security for those loans is reasonably adequate at the same time it enables RE Act beneficiaries, the citizens of rural America, to receive electric service at rates which are as low as possible.

Critical to the structure of the REA program is the role which REA plays in the operations of the borrower. The REA mortgage, loan contract and wholesale power contract provide REA with many rights over the construction and operation of the borrower's system. It is through this arrangement that REA endeavors to ensure that the objectives of the RE Act are carried out, that RE Act beneficiaries receive electric service and that the REA loans are repaid.

This extensive and unique relationship between REA and its borrowers, together with the not-for-profit nature of the cooperatives, led the Federal Power Commission (FPC)—now the Federal Energy Regulatory Commission (FERC)—to conclude that rural electric cooperatives are not subject to regulation under the Federal Power Act. See *Dairyland Power Cooperative,* 37 F.P.C. 12 (1967), *aff'd sub nom., Salt River Project* v. *FPC,* 391 F.2d 470 (D.C. Cir.), *cert. denied,* 393 U.S. 857 (1968). The D.C. Circuit Court in affirming the decision of the FPC stated that,

> REA regulation and supervision of cooperatives are, in many respects, far more comprehensive than those which the Federal Power Commission exercises over investor-owned utilities * * * *Salt River Project,* 391 F.2d at 473.

Notwithstanding the overriding Federal interests in carrying out the REA program and the not-for-profit structure of REA borrowers, some State Regulatory Authorities exercise rate jurisdiction over REA borrowers. For the most part such rate jurisdiction has been exercised in a manner consistent with protecting Federal interests, in particular, repayment of loans made or guaranteed by REA. In almost all cases, such State Regulatory Authorities have approved rates that are sufficient to allow the borrower to repay REA loans, and there has been no conflict between Federal and State interests. It has become clear however, that in certain circumstances the exercise of rate jurisdiction by a State Regulatory Authority can frustrate the interests of the Federal Government and the accomplishment of the objectives of the RE Act, including the making and repayment of loans.

Experience in recent years has demonstrated the bankruptcy of a borrower presents significant problems and conflicts between Federal interests and the exercise of rate jurisdiction by a State Regulatory Authority and that Federal interests can only be fully protected through the pre-emption of State Regulatory Authority jurisdiction over the rates of a borrower, by or against whom a case under the Bankruptcy Code of 1978, as amended, has commenced.

When an electric borrower is experiencing financial problems, regardless of whether the borrower is in bankruptcy, it is REA's objective to resolve the financial problems as expeditiously as possible in a way that protects the Revolving Fund and the Federal taxpayer and ensures that the borrower will be able to resume the orderly planning, construction and operation of an electric system serving RE Act beneficiaries. The exercise of rate jurisdiction by State Regulatory Authorities over a bankrupt borrower frustrates the Federal interests by delaying resolution of the financial problems, increasing costs to the borrower and the RE Act beneficiaries, jeopardizing the orderly planning, construction and operation of the electric system, and increasing the risk of loss to the Revolving Fund and the Federal taxpayer.

The financial problems of a bankrupt borrower can often begin with its inability to obtain timely approval of needed rate increases. Whether or not that is the case, once a borrower is in bankruptcy, unless rate relief can be quickly obtained, the borrower's financial problems can quickly escalate. If the rate jurisdiction of State Regulatory Authority is pre-empted, a bankrupt borrower can obtain rate relief without undue delays and hence limit the extent of its financial problems.

In addition, pre-emption will help resolve certain problems related to the valuation of a bankrupt borrower. These problems were recently summarized in *In re Public Service Company of New Hampshire* v. *The State of New*

Hampshire and the State of New Hampshire Public Utilities Commission, 108 B.R. 845, (Bankr. D.N.H. 1989), as follows:

> It is particularly important to note the unique problem of "valuation circularity" presented by chapter 11 reorganization of a regulated monopoly utility company. A corporate reorganization under Chapter 11 of the Bankruptcy Code has as its crux the restructuring of the corporate entity and a valuation of the assets of the entity as so reorganized. The regulation of a electric utility under New Hampshire Law has the NHPUC's primary function as setting rates to be charged by the utility company. However, the value of the assets of a public utility company in large measure is determined by the rates that can be charged for the power produced by those assets; and the rates to be set by regulators for a public utility company in large measure is determined by the structure of the company and the value of its assets. It is apparent then that such circularity could easily lead to a stalemate when a public utility company comes into a bankruptcy reorganization court unless an appropriate resolution can be accomplished in the chapter 11 proceedings. (p. 2 footnote 1)

The uncertainty, delays and potential for stalemate in the valuation of a regulated utility present even greater problems in connection with a bankrupt REA borrower because of the unique corporate and financial structure of the borrower. The borrowers are cooperatives, owned and controlled by their consumers and operated on a not-for-profit basis; hence, the regulation for the borrower does not require the same balancing of interests and allocation of risks as does an investor utility. This structural difference not only can make rate regulation by State Regulatory Authorities particularly problematical, it also makes such regulation less necessary, as the FPC noted above.

The valuation problems faced in the bankruptcy of a borrower can be seen most clearly in the recent decision in *In re CFC and United States* v. *Wabash Valley Power Assn., Inc.,* No. IP87–1127–C (S.D. Ind. Jan. 19, 1990), *reversing* 77 Bankr. 991 (Bankr. S.D. Ind. 1987), in which the bankruptcy court's valuation was reversed and remanded. The court on appeal concluded that, among other matters, the bankruptcy court had failed to properly evaluate the possibility of the borrower obtaining rate increases from the State Regulatory Authority. This decision on the valuation issue came over four years after the borrower filed bankruptcy. The delays in resolving the financial problems of the borrower exacerbate these financial problems, cost the borrower and the consumer, and increase the risk that REA loans will not be repaid.

In addition to the problems associated with valuation, rate regulation of a bankrupt borrower can create problems in obtaining confirmation of a reorganization plan. Before a plan of reorganization may be confirmed by a court, under section 1129(a)(6) of the Bankruptcy Code of 1978, as amended, (11 U.S.C. 1129(a)(6)), any regulatory authority with jurisdiction over the rates of the debtor must approve any rate change provided for in the plan. This requirement further raises the potential for delay and frustration of attempts to resolve the financial problems of the borrower where the State Regulatory Authority exercises jurisdiction over rates in a manner inconsistent with Federal interests.

By pre-empting the State Regulatory Authority jurisdiction over a borrower in bankruptcy, the valuation process and confirmation of a plan of reorganization can be greatly expedited. This will, in most cases, enable REA and the borrower to reduce both the direct and indirect costs of the bankruptcy, and reduce the potential for losses in the REA Revolving Fund. This will encourage borrowers facing financial problems to work with REA and other creditors to resolve those problems. It may also serve to discourage State Regulatory Authorities which may be tempted to shift costs from the consumer to REA and the Federal taxpayer by refusing to approve rate increases necessary to repay the REA loans.

REA wishes to stress that it is the intent of REA to work with borrowers and State Regulatory Authorities to resolve borrowers' financial problems outside of bankruptcy. In most cases, the interests of the Federal Government can be protected consistent with State interests. It should be noted that this regulation addresses pre-emption in only those certain specific circumstances identified. The proposed regulation is not intended to and does not limit in any manner the pre-emption of State law and actions of State Regulatory Authorities, whether that pre-emption be implicit or explicit under the RE Act.

List of Subjects in 7 CFR Part 1714

Administrative practice and procedure, Electric power rates, Electric utilities, Federal pre-emption, Guaranteed loans, Loans programs—energy, REA mortgage, Wholesale power contracts.

In view of the above, REA proposes to amend 7 CFR chapter XVII, part 1714, established elsewhere in today's issue of the **Federal Register** as follows:

PART 1714—ELECTRIC RATES, SERVICE AND CONTRACTS

1. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950b; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. A new supart I consisting of §§ 1714.900 through 1714.906 is added to read as follows:

Subpart I—Federal Pre-emption in Rate Making in Connection with REA Electric Borrowers in Bankruptcy

Sec.

1714.900 Purpose.
1714.901 Policy.
1714.902 Definitions and Rules of Construction.
1714.903 Requirements of REA Documents.
1714.904 Pre-emption.
1714.905 Exclusive REA Rate Jurisdiction.
1714.906 Additional Statutory Pre-emption.

Subpart I—Federal Pre-emption in Rate Making in Connection With REA Electric Borrowers in Bankruptcy

§ 1714.900 Purpose.

This subpart contains regulations of the Rural Electrification Administration (REA) implementing provisions of sec. 4 of the RE Act (7 U.S.C. 904) which authorizes the Administrator to establish terms and conditions of loans, and provisions of the REA documents which provide for the establishment of rates for electric service to be charged by REA electric borrowers. This subpart contains the general regulations of REA for the pre-emption of the regulation by a State Regulatory Authority under State law of an REA borrower's rates and for the exercise by REA of exclusive jurisdiction over rates of a borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, has commenced.

§ 1714.901 Policy.

(a) REA makes and guarantees loans to borrowers to bring electric service to persons in rural areas. To accomplish this objective, REA normally requires, as a condition to making or guaranteeing any loans to an electric borrower, that the borrower execute and deliver the REA documents in the form prescribed by REA. The REA mortgage secures repayment of the loans made or guaranteed by REA and other loans which, pursuant to the RE Act, REA has permitted to be secured pursuant to the REA mortgage. The Administrator relies upon the REA mortgage together with other REA documents to find and

certify, as required by § 4 of the RE Act (7 U.S.C. 904), that the security for the loan is reasonably adequate and the loan will be repaid within the time agreed.

(b) REA requires borrowers to take such actions as may be necessary to establish rates for electric service which are sufficient to pay the principal of and interest on the loans made or guaranteed by REA in a timely manner and to meet the requirements of the REA documents.

(c) With respect to borrowers whose rates are not regulated by a State Regulatory Authority, REA requires that such borrowers establish rates and to obtain REA approval of such rates as required by the REA documents.

(d) With respect to borrowers whose rates are regulated by a State Regulatory Authority, REA permits State Regulatory Authorities to regulate, pursuant to applicable provisions of State law, the borrowers' rates so long as the rates approved are sufficient to provide for repayment of secured loans and are otherwise consistent with Federal interests.

(e) To protect Federal interests, including without limitation the ability of the borrower to repay REA loans, REA's policy is to exercise exclusive jurisdiction over the rates for electric service charged by a borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, has commenced.

§ 1714.902 Definitions and rules of construction.

(a) Definitions.

For the purpose of this subpart, the following terms shall have the following meanings:

Administrator means the Administrator of REA.

Bankruptcy Code of 1978, as amended means the Bankruptcy Reform Act of 1978, as amended (11 U.S.C. 101 *et seq.*).

Borrower means any organization which has an outstanding loan made or guaranteed by REA for rural electrification.

RE Act means Rural Electrification Act of 1936, as amended. (7 U.S.C. 901 *et seq.*).

REA means Rural Electrification Administration, an agency of the United States Department of Agriculture.

REA Documents means the REA loan contract, REA mortgage and, if the Borrower is engaged in the wholesale sale of electric power and energy to distribution members pursuant to REA Wholesale Power Contracts, the REA Wholesale Power Contract.

REA Loan Contract means the agreement, as amended, supplemented, or restated from time to time, between a borrower and REA providing for loans made or guaranteed pursuant to the RE Act.

REA Mortgage means the mortgage and security agreement, as from time to time supplemented, amended and restated, made by and among the borrower, REA, and, if a party thereto, third party lenders securing the payment of outstanding loans made or guaranteed by REA and other lenders.

REA Wholesale Power Contract means the contract for the wholesale sale of electric power and energy between a power supply borrower and its distribution member as approved by REA.

Secured Loans shall mean outstanding loans secured pursuant to the REA mortgage.

(b) Rules of Construction.

Unless the context shall otherwise indicate, the terms defined in § 1714.902(a) hereof include the plural as well as the singular, and the singular as well as the plural. The words "herein," and "hereunder", and words of similar import, refer to this subpart as a whole. "Includes" and "including" are not limiting and "or" is not exclusive.

§ 1714.903 Requirements of REA documents.

Each borrower shall establish and adjust rates for electric service as set forth in the REA documents to assure that the borrower will be able to make required payments on secured loans and to otherwise meet the terms of the REA documents.

§ 1714.904 Pre-emption.

State Regulatory Authority jurisdiction over an REA borrower's rates shall be pre-empted by the RE Act and REA shall have exclusive jurisdiction of the borrower's rates:

(a) On (Insert date the final rule is effective) with respect to any borrower by or against whom a case under the Bankruptcy Code of 1978, as amended, was commenced prior to and remains outstanding on (Insert date the final rule is effective); and

(b) Upon the filing of a petition by or against the borrower commencing a case under the Bankruptcy Code of 1978, as amended, with respect to all other borrowers.

§ 1714.905 Exclusive REA rate jurisdiction.

(a) Upon the pre-emption of State Regulatory Authority as provided in this subpart, REA will exercise exclusive jurisdiction over the rates of the borrower.

(b) So long as the State Regulatory Authority shall be pre-empted hereunder, REA shall be considered the regulatory body with jurisdiction over rates for all purposes, including for the purposes of the REA documents and for the purposes of section 1129(a)(6) of the Bankruptcy Code of 1978, as amended (11 U.S.C. 1129(a)(6)).

(c) REA shall exercise exclusive jurisdiction over the rates of the borrower until the Administrator shall in writing approve the resumption of jurisdiction by the State Regulatory Authority. The Administrator shall approve resumption only after determining that such jurisdiction shall be exercised in a manner consistent with Federal interests.

§ 1714.906 Additional statutory pre-emption.

This subpart addresses pre-emption of State law and State Regulatory Authority upon the filing of a petition by or against the borrower commencing a case under the Bankruptcy Code of 1978, as amended. Nothing in this subpart waives, limits, or otherwise affects the explicit pre-emption or pre-emption, which is implicit and shall occur pursuant to the RE Act as a matter of law, of State law or action of a State Regulatory Authority where such State law or such action compromises Federal interests, including the ability of any borrower to repay loans made or guaranteed by REA.

Dated: March 9, 1990.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90-7409 Filed 3-29-90; 8:45 am]

BILLING CODE 3410-15-M

Animal and Plant Health Inspection Service

[Docket No. 90-007]

9 CFR Part 3

RIN 0579-AA20

Animal Welfare; Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of intent to repropose.

SUMMARY: On March 15, 1989, we published in the **Federal Register** a document entitled "Animal Welfare; Standards," in which we proposed to amend the regulations governing the standards for the humane handling, care, treatment, and transportation of dogs and cats (subpart A), guinea pigs and hamsters (subpart B), rabbits (subpart C), and nonhuman primates (subpart D). We invited comments from

the public on the proposed amendments. Included among the recommendations we received were those submitted by the Department of Health and Human Services. Of the comments received, the large majority concerned either dogs and cats or nonhuman primates. In order to incorporate into our rulemaking and allow public comment on revisions we feel are warranted regarding our proposal, we intend to publish a reproposal regarding subparts A and D. We intend to address the comments regarding subparts B and C in a separate final rule.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 269, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8790.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*), enacted in 1966 and amended in 1970, 1976, and 1985, authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Animal Welfare regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Act. Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated entities, of animals covered by the Act.

In order to comply with and implement the amendments to the Act contained in Public Law 99–198, "The Food Security Act of 1985," and to reflect our experience in administering the regulations, we amended parts 1 and 2 of the regulations and have published a proposal to amend part 3, as discussed below. In this document, we are giving notice that we intend to repropose subparts A and D of part 3.

On March 31, 1987, we published in the **Federal Register** two proposals (52 FR 10292–10322, Docket Numbers 84–010, and 84–027) to amend parts 1 and 2 of the regulations. We solicited comments for a 60-day period, ending June 1, 1987. We received 7,857 comments, many of which stated that it was difficult to comment upon the proposals to amend parts 1 and 2 independently of our proposal to amend the standards in part 3. Based on the comments received in response to those proposals, and on consultations with the Department of Health and Human Services (HHS) and other interested agencies, we published in the **Federal Register**, on March 15, 1989, two documents (54 FR 10822–10897, Docket Numbers 88–013 and 88–014) that incorporated certain changes to the initial proposal, and that requested comments on the interrelationship between those amended documents and changes we proposed to make to part 3 of the regulations. The proposed changes to part 3 were published in the March 15, 1989, issue of the **Federal Register** (54 FR 10897–10954, Docket Number 87–004). Those proposed changes concern the humane handling, care, treatment, and transportation of dogs and cats (subpart A), guinea pigs and hamsters (subpart B), rabbits (subpart C), and nonhuman primates (subpart D). A document correcting printing errors to Docket Number 87–004 was published in the **Federal Register** on May 12, 1989 (54 FR 20669).

We solicited comments on the interrelationship of parts 1 and 2 with part 3 for a 60-day period, ending May 15, 1989. Five thousand five hundred eighty-two comments, received or postmarked by that date, were considered in preparing final rules for parts 1 and 2. On August 31, 1989, we published two documents (54 FR 36112–36163, Docket Numbers 89–130 and 89–131) making final the proposed changes to parts 1 and 2.

We solicited comments on the proposal to amend part 3 for a 120-day period, ending July 13, 1989. Approximately 10,700 comments were received in time to be considered. Of those comments, relatively few were in response to our proposed changes regarding subparts B and C. The large majority were in response to our proposed changes regarding subparts A and D. Included among the recommendations we received were those submitted by HHS. As directed by the Act, throughout the rulemaking process we have consulted at length with HHS regarding the proposed standards.

In order to incorporate into our rulemaking and allow public comment on revisions we feel are warranted regarding our proposal—including the incorporation wherever possible of "performance" standards, rather than those based on rigid design specifications—we intend to publish a reproposal regarding dogs and cats, and nonhuman primates. Because of the significant differences in the number and complexity of the comments received regarding rabbits, guinea pigs and hamsters, compared to those regarding dogs and cats, and nonhuman primates, we will address the comments concerning subparts B and C in a final rule separate from the final rulemaking for subparts A and D.

Authority: 7 U.S.C. 2131–2157; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 28th day of March 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–7467 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–34–M

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 86-044P]

Sodium Lactate and Potassium Lactate as Flavor Enhancers and Flavoring Agents in Various Meat and Poultry Products

AGENCY: Food Safety and Inspection Service.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 1, 1990, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations to permit the use of sodium lactate and potassium lactate as flavor enhancers and flavoring agents in various meat and poultry products. The comment period was scheduled to close on April 2, 1990. FSIS has received a request to extend the comment period for an additional 30 days. FSIS has determined that the request should be granted and, therefore, is extending the comment period for an additional 30 days.

DATE: May 2, 1990.

ADDRESSES: Written comments to: Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3168 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be

directed to Mr. Ashland L. Clemons, at (202) 447–6042.

FOR FURTHER INFORMATION CONTACT: Ashland L. Clemons, Director, Standards and Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Area Code (202) 447-6042.

SUPPLEMENTARY INFORMATION: The Agency was petitioned by Oscar Mayer Food Corporation and Shenandoah Products Inc. to amend the Federal meat and poultry products inspection regulations to allow the use of sodium lactate and potassium lactate as flavor enhancers and flavoring agents in cooked meat and cooked and raw poultry products. On April 6, 1987, these substances were affirmed as generally recognized as safe (GRAS) by the Food and Drug Administration (FDA) for use as direct human food ingredients, as flavor enhancers, flavoring agents, adjuvants, humectants, and pH control agents except in infant formulas and infant foods. Sodium lactate and potassium lactate were added to 21 CFR part 184.1639 and 184.1768 (52 FR 10884). That regulation affirmed these substances as GRAS at levels sufficient for purpose when used in accordance with good manufacturing practices.

On March 1, 1990, FSIS published a proposed rule (55 FR 7339), to amend the Federal meat and poultry products inspection regulations to allow sodium lactate and potassium lactate to be used as flavor enhancers and flavoring agents in meat and poultry products not produced for consumption by infants. FSIS proposed to add sodium lactate and potassium lactate as flavor enhancers and flavoring agents to the Agency Charts of approved substances in 9 CFR 318.7(c)(4) and 381.147(f)(4) of the Federal meat and poultry products inspection regulations.

Interested persons were given until April 2, 1990, to comment on this proposed rule. FSIS has received a request to extend the comment period to allow more time to review the proposal and submit comments. FSIS is interested in receiving additional information and is, therefore, extending the comment period for an additional 30 days to May 2, 1990.

Done at Washington, DC, on March 26, 1990.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 90–7411 Filed 3–30–90; 8:45am]

BILLING CODE 3410–DM

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AA65

Amendments to Use of Explosive Materials and Blasting Units in Metal and Nonmetal Mines With Methane

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: MSHA is proposing to revise one section of the safety standards for methane in metal and nonmetal mines to conform the standards to recently revised approval requirements for multiple-shot blasting units in subpart D of part 7. The methane standards in 30 CFR 57.22606(g)(1) currently require that blasting units used in underground metal and nonmetal mines with a history of, or a potential for methane liberation be approved by MSHA under 30 CFR part 25 or meet certain performance requirements as outlined in (g)(2). The reference to 30 CFR part 25 would be deleted and replaced with the requirement that blasting units be approved by MSHA or accepted for use prior to the effective date of 30 CFR part 7 subpart D. The requirement in § 57.22606(a) that mine operators notify district managers of nonapproved blasting units prior to their use would also be deleted.

DATES: Written comments must be received on or before May 2, 1990.

ADDRESSES: Send written comments to the Office of Standards, Regulations and Variances; MSHA; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations and Variances; MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION:

Background and Effect of Rule

The final rule of safety standards for methane in metal and nonmetal mines was published as a new subpart T of part 57 on July 1, 1987 (52 FR 24924). Section 57.22606 of the standards specifies in (g)(1) the use of blasting units approved by MSHA under 30 CFR part 25 or alternately, in (g)(2), allows nonapproved blasting units to be used, which meet certain performance requirements. This (g)(2) compliance alternative permits the use in Category III mines of larger capacity blasting units than those approved under 30 CFR part 25. The July 1, 1987 preamble to the methane standards noted, however, that new technical specifications for blasting units, then under development by MSHA, might become the subject of a future rulemaking in the Agency's revised approval procedures for mine equipment and that blasting unit requirements for this mine category might be superseded by promulgation of any such new technical specifications. Revisions to the testing and approval requirements for multiple-shot blasting units have been completed and published as subpart D of 30 CFR part 7 (54 FR 48202).

The revised multiple-shot blasting unit approval regulations set no limit on the voltage thus allowing blasting units capable of firing more than 20 shots to be approved. All blasting units approved under subpart D are required to have an approval marking identifying their capacity in terms of maximum blasting circuit resistance. This information will enable mine operators to determine the number of shots which can be safely fired with each blasting unit. In addition, the performance requirements of the compliance alternative found in existing § 57.22606(g)(2) are the same as those required for approval of blasting units by part 7 subpart D. With these revised provisions in place, larger capacity blasting units can now be approved and be available for use by mine operators of Category III mines.

Under the proposal, the language in § 57.22606(a) requiring mine operators to notify District Managers of the use of nonapproved blasting units would be deleted. Such notification has occurred in the past when operators needed to use nonapproved large capacity blasting units. Since large capacity units can now be approved under the revised blasting unit approval regulations, this provision is no longer necessary.

MSHA proposes to revise § 57.22606(g)(1) by deleting the phrase "under 30 CFR part 25." This would allow mine operators to use any MSHA approved multiple-shot blasting unit without regard to the specific approval part under which it was issued. This is possible because, as indicated in the revised multiple-shot blasting unit regulations, the approval status of blasting units already tested and approved by the Agency will remain unaffected. As a result, those units may be manufactured and used as MSHA approved as long as no changes to the blasting units are made.

Section 57.22606(g)(2) would also be modified by the proposal. The performance requirements contained in (g)(2) would be deleted and replaced with the phrase "accepted by MSHA

prior to the effective date of 30 CFR part 7 subpart D." This would enable mine operators to continue to safely use blasting units already accepted for use by the Agency. This acceptance could have been granted under an interim criteria issued for a large capacity blasting unit or through an evaluation which determined a particular unit to be as safe for use as an approved unit.

Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would revise previously issued methane standards to allow mine operators to use any MSHA approved multiple-shot blasting unit without regard to the specific approval part under which it was issued and deletes certain performance requirements which are the same as those required for approval of blasting units by part 7 subpart D. There is no cost impact of this proposed revision on mine operators. The cost impact of the testing and approval requirements has been analyzed in the context of subpart D of part 7 in which the Agency has determined that the rule would not result in a major cost increase or have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required. The Agency has also determined that the final rule would not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The proposal does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 57

Mine safety and health, metal and nonmetal mining, safety standards for methane.

Dated: March 26, 1990.

John B. Howerton,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, subpart T, part 57, subchapter N, chapter 1, title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 57—[AMENDED]

The authority citation for subpart T of part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22606 is proposed to be amended by revising paragraphs (a) and (g) to read as follows:

§ 57.22606 Explosive materials and blasting units (III mines).

(a) Mine operators shall notify the appropriate MSHA District Manager of all nonapproved explosive materials to be used prior to their use. Explosive materials used for blasting shall be approved by MSHA under 30 CFR part 15 or nonapproved explosive materials shall be evaluated and determined by the District Manager to be safe for blasting in a potentially gassy environment. The notice shall also include the millisecond-delay interval between successive shots and between the first and last shot in the round.

* * * * *

(g) Blasting units shall be:

(1) Approved by MSHA; or

(2) Accepted by MSHA prior to the effective date of 30 CFR part 7 subpart D.

[FR Doc. 90-7385 Filed 3-30-90; 8:45 am]

BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL-3751-3]

Cancellation Notice of Scheduled Public Hearings Concerning EPA's Tentative Approval of Mississippi's Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of cancellation of public hearings concerning approval of Mississippi's underground storage tank (UST) program.

SUMMARY: The purpose of this notice is to announce the cancellation of two public hearings concerning EPA's approval of Mississippi's UST program. On February 20, 1990, EPA published a tentative decision announcing its intent to grant Mississippi final approval of its program and to hold two public hearings to allow all interested persons to testify on any aspect of Mississippi's underground storage tank program approval application. The two hearings were to be held on April 13, 1990, in the Embassy I Room, Metro Ramada Inn, Ellis Avenue and Interstate 20 West in Jackson, Mississippi, from 10 a.m. to 1 p.m. and from 7 p.m. until the end of testimony or 10 p.m. EPA had reserved the right to cancel these hearings in the event of no significant public interest. Since no public requests to testify on any aspect of Mississippi's UST program application for final approval were made, EPA is cancelling the previously scheduled public hearings.

Further background on EPA's tentative decision to grant final approval of Mississippi's UST program appears at 55 FR 5861, February 20, 1990. Any further information regarding EPA's final approval of Mississippi's underground storage tank program can be obtained from Mr. John K. Mason, (404) 347-3866, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Dated: March 22, 1990.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 90-7452 Filed 3-30-90; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Inspector General

42 CFR Parts 1000, 1001, 1002, 1003, 1004, 1005, 1006, and 1007

RIN 0991-AA47

Health Care Programs: Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100-93

AGENCY: Office of the Secretary, Office of Inspector General (OIG), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the OIG sanction and civil money penalty provisions established through section 2 and other conforming amendments in Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, along with certain additional provisions contained in Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 and Public Law 100-360, the Medicare Catastrophic Coverage Act of 1988. Specifically, these regulations are designed to protect program beneficiaries from unfit health care practitioners, and otherwise to improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX, and XX of the Act.

DATES: To assure consideration, comments must be mailed and delivered to the address provided below by June 1, 1990.

ADDRESSES: Address comments in writing to: Office of Inspector General, Department of Health and Human Services, Attention: LRR-18-P, Room 5246, 330 Independence Avenue SW., Washington, DC 20201.

If you prefer, you may deliver your comments to Room 5551, 330 Independence Avenue SW., Washington, DC. In commenting, please refer to file code LRR–18–P.

Comments will be available for public inspection beginning approximately two weeks after publication in Room 5551, 330 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 9 a.m. to 5 p.m., (202) 472–5270.

FOR FURTHER INFORMATION CONTACT:

Joel J. Schaer, Legislation, Regulations and Public Affairs Staff, (202) 472–5270

James Patton, Office of Investigations, (301) 966–9601

Robin Schneider, Office of the General Counsel, (202) 245–6306.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Medicare and Medicaid Patient and Program Protection Act (MMPPPA) of 1987, Public Law 100–93, was enacted on August 18, 1987 and became effective on September 1, 1987. This statute recodified and expanded the Secretary's authority to exclude various individuals and entities from receiving payment for services that would otherwise be reimbursable under Medicare (title 18), Medicaid (title 19), the Maternal and Child Health Block Grant Program (title 5) and the Social Services Block Grant (title 20). In addition, new civil money penalty (CMP) authorities, and technical amendments to existing CMP provisions, were established under MMPPPA.

The Medicare and Medicaid Patient and Program Protection Act of 1988

MMPPPA both consolidated many of the Secretary's preexisting exclusion authorities into section 1128 of the Social Security Act (42 U.S.C. 1320a–7), and added significant new grounds for exclusion under those authorities. The Secretary's authority under this section of the Act has been delegated to the Department's Office of Inspector General (OIG). (53 FR 12999, April 20, 1988).

A. Expanded Exclusion Authorities

MMPPPA provides the OIG broad authority to protect the financial integrity of the Department's Medicare and other health care programs, as well as the quality of care provided to the programs' beneficiaries, by giving OIG added authority to control who may obtain payment for services furnished to program beneficiaries. The statute provides an expanded list of activities that can, and in some cases must, serve as a basis for exclusion from eligibility for such payment. Section 1128 of the Act provides for two types of exclusions—mandatory and permissive. The mandatory exclusions, found in section 1128(a), require that an individual or entity that has been convicted of certain types of crimes be excluded, and that the exclusion be for a period of not less than five years. Under authorities set forth in section 1128(b) of the Act, the OIG has the discretion to determine whether, and for how long, to impose the permissive exclusions.

MMPPPA establishes two categories of permissive exclusions. One category involves the authority to exclude an individual or entity from Medicare and the State health care programs based on an action previously taken by a court, licensing board or other agency. For example, a person who has (1) been convicted of embezzlement, (2) had his or her license to practice medicine revoked, or (3) been debarred from practicing medicine in a Veterans' Administration facility, could also be excluded from Medicare and the State health care programs, as discussed in further detail below. We will refer to these types of exclusions as derivative exclusions because our ability to exclude derives from the fact that another entity has imposed a sanction on the individual or health care entity. The OIG would not be required to re-establish the factual or legal basis for such underlying sanction.

The second broad category of permissive exclusions is based on determinations of misconduct that would originate with determinations made by the OIG. These non-derivative exclusions would require the OIG, if challenged, to make a prima facie showing that the improper behavior did occur. For example, a person could be excluded if he or she (1) rendered poor quality care, (2) submitted bills to the Medicare program substantially in excess of usual charges, (3) failed to provide certain required information, or (4) filed false claims for reimbursement.

B. State Health Care Programs: Exclusions and Waivers

The Act provides for exclusion not only from the Medicare program, but also from "State health care programs," which are defined to include those programs covered under titles 5, 19, 20 of the Social Security Act. The statute makes clear that, in most cases, an individual or entity excluded from Medicare is to be excluded from all of these programs, and the exclusion is to be for the same period of time. The relevant State agency or agencies, when directed by OIG, must exclude from participation in State health care programs any individual or entity excluded from Medicare by the OIG.

The OIG will consider requests for a waiver from exclusion from one or more of the State health care programs in limited situations. Waiver would be granted only for those programs for which the State agency administering the specific program requests the waiver, and only where the individual or entity is the sole community physician or sole source of specialized services in a community.

These proposed regulations are intended to implement section 2 of MMPPPA and certain conforming amendments found elsewhere in that statute. In addition, certain relevant provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99–272, and the Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, would also be promulgated through this rulemaking. As a result of these statutory changes, various revisions to 42 CFR chapter V are being proposed, as discussed below.

II. Provisions of the Proposed Regulations

Part 1001

The basic structure of the regulations in 42 CFR part 1001 is as follows: for each type of exclusion, the basis (that is, the activity that will justify the exclusion) is set out, and followed by the considerations the OIG will use in determining the period of the exclusion. The general provisions concerning notice and opportunity to respond, requests for hearing, notice to the public, the effect of the exclusion, and requests for reinstatement appear in subsequent subparts. The proposed regulations governing Administrative Law Judge (ALJ) hearings and subsequent appeals to the Secretary appear in 42 CFR part 1005.

A. Mandatory Exclusions

Section 1001.101—The Act makes mandatory the exclusion of any individual or entity that has been convicted of (1) a criminal offense related to the delivery of an item or service under Medicare or a State health care program, or (2) patient abuse or neglect. The exclusion for program-related crimes is essentially a recodification of prior law. Mandatory exclusions under § 1001.101(a) are broadly defined to include offenses relating to performance of management or administrative services relating to

delivery of items or services under the program. These could include, for example, a physician's conviction for filing false Medicare or Medicaid claims, a Medicare carrier claims processor's conviction for accepting bribes relating to payment of claims under a program, or a nursing home administrator convicted of using a Medicaid beneficiary's patient fund account for his or her own use. The exclusion for patient abuse or neglect is intended to apply to all criminal offenses that entail or result in neglect or abuse of patients.

Period of exclusion under § 1001.101—Congress provided that these exclusions are not only mandatory, but must be for a minimum period of five years. We are proposing that the exclusion may be for a longer period if aggravating circumstances exist with respect to the individual or entity. Mitigating circumstances may offset the aggravating circumstances, but the exclusion cannot be for a period less than five years.

Although a person excluded under these provisions is entitled to an ALJ hearing following the imposition of the exclusion, the issues at that hearing will be limited, in view of the derivative nature of the exclusion. The hearing may not be used to collaterally attack the conviction which is serving as the basis of the exclusion. Moreover, if the exclusion is for the five-year statutory minimum, that period may not be challenged.

B. Permissive Exclusions

There are several types of permissive exclusions. As noted in the discussion above, some are derivative in nature and others are not.

1. Derivative Exclusions

(a) *Sections 1001.201, 1001.301 and 1001.401—Exclusions based on criminal convictions*—Sections 1001.201, 1001.301 and 1001.401 would authorize exclusion of individuals and entities that have been convicted of certain types of crimes that are not directly related to delivery of items or services under Medicare or the State health care programs. Section 1001.201 concerns convictions for fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct in two broad contexts: (1) With respect to any program operated or financed by a federal, State or local government agency, and (2) in connection with any health care item or service. Thus, conviction of such crimes in connection with either a government-funded program or a private health insurance program will now subject someone to exclusion from the Medicare and State health care programs. While some convictions for crimes relating to Medicare or the State health care programs would also fall under this permissive section, the mandatory exclusion authority of § 1001.101 would be used in all cases where it applies. In determining whether a particular type of crime is covered by this section, the OIG would look to the nature of the actual offense, and not merely at its label.

Section 1001.301 involves convictions for obstruction of investigations of program-related crimes. Among the types of convictions covered by this section are perjury, witness tampering and obstruction of justice. This list is not intended to be exhaustive.

Section 1001.401 concerns certain federal and State convictions relating to controlled substances. The criminal offenses enumerated in the statute and the regulations do not include offenses relating solely to possession of controlled substances.

Periods of exclusion under §§ 1001.201, 1001.301, and 1001.401—The OIG is proposing that an exclusion on any of these three bases be for a period of five years as set forth in the regulations. This five-year benchmark is based on several factors. Although Congress did not set a mandatory minimum period for these exclusions, the policies that it articulated in the legislative history supporting the minimum five-year period for mandatory exclusions apply equally to these exclusions. Specifically, the legislative history indicates that:

> [A] minimum five-year exclusion is appropriate, given the seriousness of the offenses at issue. The minimum exclusion provides the Secretary with adequate opportunity to determine whether there is a reasonable assurance that the types of offenses for which the individual or entity was excluded have not recurred and are not likely to do so. Moreover, a mandatory five-year exclusion should provide a clear and strong deterrent against the commission of criminal acts.

H.R. Rept. No. 85, Part 1, 100th Cong., 1st Sess. 5–6 (Energy and Commerce Committee) (1987); H.R. Rept. No. 85, Part 2, 100th Cong., 1st Sess. 5 (Ways and Means Committee) (1987); S. Rept. No. 109, 100th Cong., 1st Sess. 5 (Finance Committee) (1987).

The same policies would apply to these three types of exclusions. The types of offenses set out in §§ 1001.201, 1001.301 and 1001.401 are comparable in nature and seriousness to the ones for which Congress prescribed a minimum five-year period. Congress recognized that a five-year period would be appropriate to use to determine whether the offenses are likely to recur, a standard equally applicable to the permissive exclusions and the mandatory ones. Moreover, the interest in deterrence is equally strong in both contexts. The legislative history also states:

> While the Committee expects that most of these [permissive exclusions based on convictions] will result in exclusion, it wishes to give the Secretary the option to avoid exclusion if, in his judgment, exclusion would jeopardize another investigation.

H.R. Rept. No. 85, Part 1, *supra*, at 7; H.R. Rept. No. 85, Part 2, at 6; S. Rept. No. 109, *supra*, at 6.

Accordingly, except in unusual cases, the OIG intends to treat the convictions in §§ 1001.201, 1001.301 and 1001.401 similarly to the convictions set forth in § 1001.101. However, because the five-year period is not made mandatory in the context of permissive exclusions, the OIG would consider whether there are circumstances in the context of a particular case that would warrant either increasing or decreasing the five-year exclusion period.

(b) *Sections 1001.501 and 1001.601—Actions by licensing boards and other agencies*—Section 1001.501 would authorize the exclusion of an individual or entity whose license to provide health care has been revoked, suspended or that has otherwise lost its license. The Social Security Act has always prohibited a physician from providing services on a reimbursable basis in a State where he or she has no license (section 1861(r) of the Act; 42 U.S.C. 1395x(c)). This section carries that prohibition further, and would prohibit, for example, a physician who has lost a license in any State from treating program beneficiaries in every State, even if that physician has a license in another State.

The statute and the regulations refer to licenses that have been "revoked, suspended, * * * or otherwise lost, for reasons bearing on the individual's professional competence, professional performance, or financial integrity." The term "otherwise lost" is intended to cover any situation where the effectiveness of the person's license to provide health care has been interrupted or precluded, regardless of the term used in a particular jurisdiction. The exclusion is not intended normally to apply to losses of license for such infractions as failure to pay dues or improper advertising which, except in an unusual case, would not bear either on the person's ability to properly treat patients or his or her financial integrity. As noted above, however, such a person would still be ineligible for reimbursement in the State that took the

license, based on section 1861(r) of the Act.

Period of exclusion under § 1001.501—The regulations propose that a person who has lost his or her license or who has surrendered it, would be excluded for a period at least as long as that set by the State licensing agency. If surrender, suspension or revocation is for an indefinite period, the OIG would not entertain a request for reinstatement (see discussion below) until such time as the person obtains a valid license from the State where the license was lost. The OIG could also exclude someone for a period longer than the period the licensing board action is effective if the OIG determines that aggravating factors justify a longer exclusion.

Section 1001.601 provides for exclusion of an individual or entity that has been excluded, suspended or otherwise sanctioned by a State health care program or any other Federal program involving the provision of health care. The underlying action must also have been for reasons bearing on the individual's professional competence, professional performance or financial integrity.

Under this section, individuals or entities excluded from any State Medicaid program could be excluded from Medicare. The Department could also exclude from participation in its health care programs any individual or entity that another Federal agency has determined should not be participating in its health care program. For example, if a physician is barred from practicing at Veterans Administration facilities, the OIG could exclude that physician from the Medicare and State health care programs as well. The phrase "or otherwise sanctioned" is intended to cover all actions that limit the ability of a person to participate in the program at issue, regardless of what such a sanction is called. Agencies, for example, use terms such as "debarment," "termination," "suspension" or "exclusion." This section would generally not be used to exclude an individual or entity from the Department's programs based solely on the fact that another agency has imposed a monetary penalty on that individual or entity.

As discussed above, the effect of § 1001.601 would be that a State Medicaid program's decision to exclude someone from that State's program could be translated into a nationwide sanction. The OIG will entertain requests for waiver of the effect of such an exclusion from individual States on a few narrow bases. If such a waiver is granted, it would be effective only in the State or States that requested it.

Period of exclusion under § 1001.601—An exclusion under this section would never be for a period shorter than that imposed by the agency whose action is the basis for this exclusion. In some situations, the OIG may impose a longer exclusion if certain aggravating circumstances exist. If the other agency's action is for an indefinite period, the OIG would not entertain a request for reinstatement until such time as the other agency has let the individual or entity back into its program (see discussion below).

The bases for exclusion discussed above all have in common the fact that they are predicated on the action of another organization, such as the courts or another agency. It is the fact of that action taken by another agency that provides the basis for the exclusion by the OIG. Therefore, the validity of that underlying action may not be challenged in this Department's proceedings. The administrative appeal process is not a forum for collateral attack. If, however, the underlying action is subsequently reversed or vacated *ab initio*, the OIG's action would similarly be vacated.

2. Non-derivative Exclusions

Some of the bases for exclusion are based on factual determinations initially made by the OIG. Several of these non-derivative exclusion authorities are essentially recodifications of pre-existing law while others reflect new authority.

(a) *Section 1001.701*—Section 1001.701(a) would implement section 1128(b)(6)(A) of the Act and, for the most part, represents a recodification of former section 1862(d)(1)(B) of the Act. The general purpose of § 1001.701(a) would be to ensure that the programs are not charged more for covered services than are other payers.

Section 1001.701(b) would implement section 1128(b)(6)(B) of the Act, formerly section 1862(d)(1)(C) of the Act. The statute has been expanded, permitting the exclusion of those who provide unnecessary or substandard care not only to Medicare and State health care program beneficiaries, but to any person. The language of the provision is potentially broad enough to permit the exclusion of individuals and entities that furnish unnecessary services ordered by someone else, where the person actually providing the service would not have any basis for knowing that the service is unnecessary. For example, a pharmacy filling a prescription may not know whether that prescription is either necessary or medically appropriate. Such a pharmacy would not generally be subject to exclusion under this section, however, unless it were in a position to determine the necessity of the service and in a position to refuse to fill the prescription.

Period of exclusion under § 1001.701—The Department has a very strong interest in ensuring that program beneficiaries receive quality health care. The OIG believes that poor quality care or substantially excessive services are at least as great a threat to the programs and their beneficiaries as the types of behavior that underlie the convictions that serve as a basis for exclusion. Furthermore, where an individual or entity has been determined to be rendering care that does not meet professionally recognized standards, a substantial period of time is necessary to enable the OIG to effectively determine that the care being rendered meets and will continue to meet such standards. The OIG, therefore, proposes to use a five-year exclusion period as a benchmark for exclusions under § 1001.701, with the discretion to alter that period if aggravating or mitigating circumstances exist with respect to the individual or entity involved.

(b) *Section 1001.801*—Section 1001.801 provides for the exclusion of health maintenance organizations (HMOs) and similar types of entities for failure to provide medically necessary items and services where such failure has adversely affected or has a substantial likelihood of adversely affecting program beneficiaries.

Period of exclusion under § 1001.801—The OIG is proposing to use a five-year benchmark in this context for the same reasons discussed above with respect to § 1001.701.

(c) *Sections 1001.901 and 1001.951*—MMPPPA has expanded the bases for exclusion to include any act that is described in sections 1128A or 1128B of the Act. As a result, any activity that would serve as the basis for imposition of a civil money penalty (CMP) under section 1128A may now serve as the basis for an exclusion as well, independent of whether penalties and assessments are also being imposed. In addition, any activity that could be the basis for criminal sanctions may now also serve as the basis for an exclusion, irrespective of whether criminal sanctions are pursued or whether a person is convicted.

Specifically, § 1001.901 provides for exclusion actions based on acts described in section 1128A of the Act (42 U.S.C. 1320a–7a), the CMP law. Section 1001.951 provides for exclusions based on conduct that is also criminal under section 1128B of the Act, a recodification of the criminal provisions formerly contained in sections 1877 and 1909 of

the Act as amended. Exclusion of an individual or entity for committing such an act, however, will not require proof beyond a reasonable doubt as it would if criminal sanctions were being sought. To the contrary, the usual standard of proof in an administrative proceeding, that is, the preponderance of the evidence, would apply. (See *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 102, *reh'g denied*, 451 U.S. 933 (1981). Also see H.R. Rep. No. 85, part 1, *supra*, at 10; H.R. Rep. No. 85, part 2, *supra*, at 9; S. Rep. No. 109, *supra*, at 10.)

Section 1001.951 not only encompasses what was formerly section 1862(d)(1)(A), the filing of false claims, but also now authorizes an exclusion based on behavior that is described in section 1128B(b) of the Act (formerly sections 1877(b) and 1909(b)), commonly known as the anti-kickback statute. Section 1001.951(b) would make clear that an individual or entity that has offered, paid, solicited or received remuneration as described in section 1128B(b) is subject to exclusion so long as one of the purposes of such remuneration is unlawful under the statute. In other words, liability under the statute could not be avoided by the fact that there may also have been some additional, lawful purpose for the remuneration. Such an arrangement could, however, be raised in a challenge to the length of exclusion proposed by the OIG in accordance with § 1001.952.

This position has been adopted in the context of section 1128B(b) of the Act in the only Court of Appeals decision to address the issue. In *United States v. Greber*, 760 F.2d 68 (3d. Cir.), *cert. denied*, 474 U.S. 988, 106 S.Ct 396 (1985), the Court of Appeals for the Third Circuit stated: "[I]f one purpose of the payment was to induce future referrals, the Medicare statute has been violated." *Id* at 69. This regulation would specifically follow this interpretation.

The anti-kickback statute contains three statutory exceptions to its broad coverage. In addition, Congress has provided for a rulemaking proceeding to determine the appropriateness of creating additional exceptions or "safe harbors" to coverage of the anti-kickback provision. That rulemaking is being developed separately. (See 54 FR 3088, January 23, 1989). If any new exceptions are promulgated, they will be incorporated as exceptions to the bases for exclusion under this section. When these "safe harbor" regulations take effect, § 1001.951 makes clear that an individual or an entity subject to an exclusion has the burden of demonstrating that the remuneration that is the subject of the exclusion is specifically exempted by one of these "safe harbor" provisions.

Pending the outcome of that rulemaking, the OIG may exercise its discretion to take action under the language of section 1128B(b). Congress made MMPPPA effective as of September 1, 1987. It simultaneously provided for a two-year timetable for the rulemaking relating to these anti-kickback "safe harbor" provisions, without providing that the use of the exclusion authority relating to kickbacks should await the completion of that rulemaking.

Periods of exclusion under §§ 1001.901 and 1001.951—There is no benchmark being proposed with respect to the length of exclusions taken under §§ 1001.901 and 1001.951. Rather, the proposed regulations list factors that the OIG will consider in setting a length of exclusion. The factors being proposed to determine the length of exclusions under § 1001.901 are similar to those set forth in the CMP law, except that the factor relating to financial condition is not being included because that factor is relevant only to the amount of a penalty or assessment and not to the length of an exclusion.

The rulemaking relating to the anti-kick provisions described above may result in further refinements of the provisions of § 1001.952 concerning the factors that will be considered in determining the length of exclusions based on section 1128B(b) violations.

(d) *Section 1001.1001*—Section 1001.1001 provides for the exclusion of entities when they are owned or controlled by individuals who have been convicted, excluded or have had CMPs or assessments imposed against them. This provision reflects a significant broadening of the authority that the OIG had under former section 1128(b) of the Act to exclude entities under the control or ownership of individuals that had been excluded as a result of convictions of program-related crimes under the former section 1128(a). Under MMPPPA, entities may now be excluded if they are owned or controlled by individuals who have been convicted, had CMPs or assessments imposed against them, or have been excluded from any of the programs under any exclusion authority, including sections 1156 and 1842(j) of the Act. The purpose of this section would be to ensure that the programs do not indirectly reimburse excluded individuals through payments to entities that they control or own or with which they have any significant relationship.

Period of exclusion under § 1001.1001—We are proposing that an entity excluded under this section be excluded for a period corresponding to the period set for the individual whose relationship with the entity is the basis for the exclusion. If the entity severs its relationship with the individual, it would be eligible to seek reinstatement at such time.

(e) *Sections 1001.1101 and 1001.1201*—Several of the new exclusion authorities relate to the failure to provide certain information to the Department or its agents. The OIG recognizes that these types of actions may not have as severe an impact on the programs and their beneficiaries as do some of the other bases for exclusion set forth above. On the other hand, §§ 1001.1101 and 1001.1201 are based on pre-existing statutory disclosure obligations. The proper administration of the programs depends in large part on the Department having access to information that is required by statute. Balancing these interests, the OIG intends to take its responsibilities under these sections seriously, but in general does not expect to take action based on isolated or unintentional failures to supply information unless such failures have a significant impact on the programs or their beneficiaries.

(f) *Section 1001.1301*—Section 1001.1301 would authorize exclusion for failures to grant immediate access upon reasonable request to certain agency representatives. Congress mandated that the terms "immediate access" and "reasonable request" be defined in regulations. The provision distinguishes between two general types of request for access. The first—proposed in § 1001.1301(a) (1) and (2)—addresses requests by the entities that review compliance by certain types of facilities with their applicable conditions of participation in the programs. Congress recognized that, in most cases, such access will be meaningful only if it is granted at the time the request is made. For example, access to a nursing home by State survey personnel to inspect compliance with on-site nursing services requirements becomes meaningless if the facility has the opportunity before the access is granted to correct a situation that might otherwise violate its condition of participation. Therefore, in the context of this section, we are proposing to define the terms "immediate access" and "reasonable request" to ensure access on the spot. This is intended to be consistent with those rules governing survey agencies that are conducting the surveys.

Section 1001.1301(a) (3) and (4) provides for an exclusion where individuals or entities fail to provide

immediate access to investigators or agents of the OIG or the State Medicaid Fraud Control Units (MFCUs) in conjunction with the investigators' or agents' review of documents related to the control of fraud and abuse in the Department's programs. (The OIG's authority to seek documents is rather broad (42 U.S.C. 3525)). The definition of the phrase "failure to grant immediate access" in this context would mean the failure to produce or make available for inspection and copying requested records, or to provide a compelling reason why such records cannot be produced, within 24 hours. We also propose to define the phrase "reasonable request" as a request in writing presented by a properly identified agent of the OIG or the MFCU. Although the OIG or MFCU must have information to suggest that the individual or entity from whom the documents are being sought has violated a statutory or regulatory requirement, their agents are not obliged to disclose such information except in the context of an exclusion hearing before an ALJ.

These regulations would not require that documents be produced, but only that they be made available for inspection or copying. The requested documents are to be described in writing. Except in unusual situations, we believe that 24 hours should be sufficient time for the individual or entity to determine that the person requesting the documents is a legitimate OIG or MFCU representative, and that authority exists to seek the documents at issue. If the individual or entity does not have control over or access to the requested documents, that would generally constitute a compelling reason why they could not be produced. We believe 24 hours should be sufficient time to make such a determination.

Although the OIG would not in the normal course of action assume that documents are about to be destroyed or altered, where the OIG has reason to believe that this may occur, the OIG must be able to review the documents immediately. Therefore, where the OIG or the MFCU has reason to believe that the destruction or alteration of documents may be occurring, "immediate access upon reasonable request" is proposed to mean on demand.

As a matter of constitutional law, the threat of exclusion from Federal programs as a means of obtaining access to private property is clearly permissible. *Wyman* v. *James*, 400 U.S. 309, 91 S.Ct. 381 (1971). Even if in some situations where the exercising of OIG's access authority might implicate the Fourth Amendment and the law of search and seizure, the Government conduct contemplated by § 1001.1301, as proposed, fully comports with constitutional requirements. The test in such circumstances is the reasonableness of the conduct.

With respect to State surveys of facilities, constitutional reasonableness is assured by the comprehensive regulatory scheme under which such surveys are conducted. *Donovan* v. *Dewey*, 452 U.S. 594, 100 S.Ct. 2534 (1981). Further, the facilities, by virtue of their participation in the Federal programs, have consented to the surveys. (See, for example, *United States* v. *Brown*, 763 F.2d 984 (1985), *cert. denied*, 106 S.Ct. 273 (1985).) Consent itself satisfies the reasonableness requirement. *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 222–23, 93 S.Ct. 2041, 2045 (1973).

With respect to OIG investigations, constitutional reasonableness is assured by the requirement that the OIG possess "information to suggest" a statutory or regulatory violation. The 24-hour period for providing access in ordinary cases is a further indication of reasonableness. However, where it appears that documents may be altered or destroyed, the presence of such "exigent circumstances" is sufficient in terms of reasonableness to justify immediate access. *United States* v. *Kunkler*, 679 F.2d 187 (9th Cir. 1982); *Pembauer* v. *City of Cincinnati*, 475 U.S. 469, 106 S.Ct. 1292 (1986). Where there are exigent circumstances, access must be granted at the time it is requested by a properly identified OIG or MFCU agent.

(g) *Section 1001.1401*—Section 1001.1401 provides for the exclusion of a hospital that has failed to comply substantially with a corrective action that has been required under section 1886(f)(2)(B) of the Act. Under that section, the Health Care Financing Administration (HCFA) may require a hospital to adopt corrective action to prevent or correct inappropriate admissions or practice patterns under the prospective payment system. Section 1886(f)(3) of the Act provides procedures for challenging HCFA's determination that there have been inappropriate admissions or practice patterns that warrant the imposition of a corrective action.

Exclusions will be based on HCFA's determination that the hospital has substantially failed to comply with such corrective action, and only issues related to the failure to substantially comply with the corrective action may be appealed in the OIG proceeding. Issues related to the underlying inappropriate admissions or practice patterns may be contested only in the proceeding under section 1886(f)(3).

(h) *Section 1001.1501*—The exclusion based on the failure to pay back loans and scholarships under proposed § 1001.1501 will be based on a determination by the Public Health Service (PHS) that the individual is in default of a covered obligation. The statute requires the Department to take all reasonable steps available to it to secure repayment of such obligations or loans before it exercises its authority to exclude. The OIG intends to rely on the PHS to take whatever actions it considers reasonable before referring the case to the OIG for an exclusion.

The legislative history suggests that offsets be taken against other money due to the individual from the programs. In addition, the legislative history also reflects that only administrative steps need be taken prior to referral for an exclusion; judicial remedies, such as suits to collect the debt, need not be pursued first.

(i) *Sections 1001.1601 and 1001.1701*—Sections 1001.1601 and 1001.1701 involve exclusions authorized under Public Law 99–272, sections 9307(c)(2) and 9301(b)(2), amending section 1842 (j) and (k) of the Act. These provisions, among other things, provide for exclusions for certain types of billing practices. The exclusions are for a maximum of five years. These sections are largely a recodification of prior regulatory provisions, except that they reflect the amendments contained in Public Law 100–360, the Medicare Catastrophic Coverage Act of 1988, which extended the exclusions to all programs.

C. Notice and Hearing Provisions

There are two different categories of exclusions for the purposes of provisions for notice and hearing: (1) Those where the OIG would provide notice and opportunity to respond prior to imposition of a sanction, and the ALJ hearing to which the excluded party is entitled would occur after the exclusion has taken effect; and (2) those where the statute provides that the exclusion may not take effect until after the ALJ hearing has occurred, unless the health and safety of individuals receiving services warrants otherwise (section 1128(f)(2) of the Act).

For most of the exclusions set forth in part 1001, the individual or entity will have an opportunity to respond in writing to the OIG's proposal to exclude before such exclusion becomes effective. With respect to some of the bases for exclusion, the excluded party would also be permitted to present oral

argument to a representative of the OIG. A full evidentiary hearinq before an ALJ would be provided only following the imposition of the exclusion.

These procedures, reflecting established practices, conform not only with the intent of Congress but also with due process. The legislative history makes clear that Congress intended in these cases, with certain exceptions discussed below, that the evidentiary hearings heard by ALJs occur after the exclusion has gone into effect. H.R. Rep. No. 85, part 1, *supra,* at 12–13; H.R. Rep. No. 85, part 2, *supra,* at 13; S. Rep. No. 109, *supra,* at 12–13. Further, it is well-established in a growing list of court decisions that a post-exclusion hearing satisfies the requirements of due process. (See, for example, *Mathews* v. *Eldridge,* 424 U.S. 319 (1976); *Varandani* v. *Bowen,* 824 F.2d 304 (4th Cir. 1987); *Koerpel* v. *Heckler,* 797 F.2d 858 (10th Cir. 1986); *Patchogue Nursing Center* v. *Bowen,* 797 F.2d 1137 (2d Cir. 1986); *Ram* v. *Heckler,* 792 F.2d 444 (4th Cir. 1986).)

As set forth in proposed §§ 1001.901 and 1001.951, Congress did provide that, for certain types of exclusions, the individual or entity whose exclusion is proposed is entitled to an ALJ hearing prior to the exclusion being effected, unless the OIG determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier.

1. Post-Exclusion Hearing Cases

In the cases involving permissive exclusions for which the exclusion may be effected prior to the ALJ hearing, we are proposing that the OIG send a notice to the individual or entity proposed to be excluded (1) indicating OIG's proposed intention to exclude them and the basis for the proposal, and (2) providing them 30 days to respond in writing. In cases where the basis for the proposed exclusion involves complicated factual issues, for example, in §§ 1001.701 or 1001.801, the individual or entity would also be offered the opportunity to meet with an OIG official to argue orally. This is comparable with existing regulations currently in effect.

Following the receipt of written comments, if any, and oral argument where permitted, the OIG would determine whether to impose the sanction. An exclusion would become effective 20 days after the notice of exclusion is sent. The excluded party would then be given the opportunity to request a hearing before an ALJ. As discussed below, we are also proposing to amend the regulations governing those hearings as part of this rulemaking activity in an effort to ensure that the procedures governing hearings in OIG sanction hearings are as uniform as possible.

Because the exclusions in accordance with the new proposed § 1001.101 are mandatory, and the five-year minimum period is established by statute, the OIG is proposing to send only a notice of exclusion in such instances.

2. Pre-exclusion hearings

For exclusions under proposed §§ 1001.901 and 1001.951, the party would generally be entitled to an ALJ hearing before the exclusion becomes effective. In these types of cases, the party would be given a notice of intent to exclude, similar to the notice currently in use in CMP proceedings, that informs the party of (i) the basis for the exclusion, (ii) the length of the exclusion, and (iii) the right to request a hearing. While the exclusion may not be effected until the ALJ upholds the exclusion, Congress made clear in the legislative history to this statute that the exclusion may be imposed during the pendency of any appeals of the ALJ decision to the Secretary or the courts (S. Rep. 109, *supra,* at 13).

If, in cases under proposed § 1001.901 or 1001.951, the OIG determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier than after the ALJ decision, the procedures governing post-exclusion hearings would be used.

During the time an individual or entity is excluded, no payment would be made by Medicare or any of the State health care programs for any items or services (i) furnished by the excluded individual or entity, or (ii) if the individual is a physician, ordered under his or her medical direction or prescription. In order to protect Medicare program beneficiaries, HCFA will pay the first otherwise payable claim submitted by a beneficiary enrolled in the Medicare part B program, where the items or services were furnished by an excluded individual or entity. However, HCFA will notify the beneficiary of the exclusion and of the fact that no claims will be paid for services or items furnished 15 days after the notice. An excluded individual or entity is additionally subject to CMPs if it presents, or causes to be presented, a claim for items or services furnished while the exclusion is in effect, regardless of whether HCFA ultimately reimburses the beneficiary.

The statute provides that emergency services furnished by excluded individuals or entities will be payable; the regulations indicate that the emergency nature of such services must be documented by a sworn statement specifying the nature of the emergency and why the items or services could not have been furnished by a non-excluded individual or entity. In addition, the regulations would make clear that an excluded physician working as an emergency room physician, or in any other capacity where he or she routinely provides emergency health care services, may not be reimbursed for such services.

Appealing an exclusion determination. The OIG's determination to exclude an individual or entity from the program is appealable to an ALJ whether the statute provides for such appeal before or after the exclusion takes effect. The regulations governing the appeals procedures are also being proposed for revision.

Appealable issues are limited to whether (i) there is a basis for liability, and (ii) the period of exclusion is unreasonable. In derivative exclusions—proposed §§ 1001.101 through 1001.601—the ALJ's review of the basis for liability would be limited to determining whether the action was of the type set forth in the statute, that is, for example, whether a conviction entailed or resulted in patient abuse or whether the excluded individual or entity was the one against whom the prior action was taken. The ALJ proceeding would not be a forum for collateral attack of the prior determination; neither substantive nor procedural challenges to the conviction or the licensing action, for example, would be heard. If, on the other hand, such an action is subsequently reversed or vacated on appeal, any exclusion based on such action will be vacated, and the individual or entity reinstated retroactively. If the previous action is modified, but neither reversed nor vacated, the exclusion would not be vacated.

Reinstatement. Although an exclusion would, in most cases, be for a fixed period, that period reflects only that time during which the OIG would not consider a request for reinstatement. Reinstatement is not automatic. Rather, reinstatement is appropriate only where—

> "* * * (A) * * * there is no basis under subsection (a) or (b) [of section 1128 of the Act] or section 1128A for a continuation of the exclusion, and (B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur." (Section 1128(g)(2) of the Act.)

An individual or entity may not be reinstated into any of the State health care programs until they are reinstated into the Medicare program. The legislative history of MMPPPA makes

clear that the OIG's determination whether reinstatement is appropriate is within its discretion, and is not subject to administrative or judicial review.

Part 1002

42 CFR part 1002 in its current form sets forth the responsibilities of State Medicaid agencies for implementing OIG exclusion and suspension authorities. (Since the enactment of Public Law 100–93, the term "suspension" has been eliminated; what were previously known as suspensions have become one category of exclusions.) As indicated above, the new requirements of Public Law 100–93 would now be incorporated into part 1001, which would require State health care programs, including Medicaid, to exclude those whom the OIG has excluded under Medicare. We believe it is unnecessary, therefore, to repeat these proposed requirements in the revised provisions being set forth in 42 CFR, part 1002.

Instead, the proposed part 1002 would replace the current regulations with provisions pertaining only to State agency-initiated exclusions. These proposed regulations would require State Medicaid agencies to have procedures in place for initiating exclusions of individuals and entities that could be excluded from Medicare under section 1128, 1128A or 1866(b)(2) of the Act. This authority was enacted in Public Law 100–93, and is codified at section 1902(p)(1) of the Act. These new regulatory provisions would place certain minimal requirements on State agencies when they undertake such exclusions—requirements that are substantially consistent with OIG procedures and ensure adequate due process.

Part 1003

The proposed revisions to part 1003, addressing the imposition of civil money penalties, would implement the statutory changes affecting section 1128A of the Social Security Act that were enacted as part of Public Law 100–93. In addition, the regulations at 42 CFR part 1003 would be amended to incorporate a number of statutory revisions made as a result of Public Law 100–203, the Omnibus Budget Reconciliation Act of 1987, Public Law 100–360, the Medicare Catastrophic Coverage Act of 1988, and Public Law 100–485, the Family Support Act of 1988. Finally, we are proposing to remove and recodify specific sections presently contained in part 1003 that set forth the hearing procedures applicable to CMP cases.

Conforming and other technical changes in part 1003 that (1) reflect the transfer of the hearing provisions, (2) substitute the term "exclusion" for "suspension," (3) provide for service of process by any means authorized by Rule 4 of the Federal Rules of Civil Procedure, and (4) extend the time to request a hearing to 60 days, are also being proposed through this rulemaking.

Revisions to the CMP authorities

As enacted, section 3 of Public Law 100–93 revised the language of section 1128A(a) of the Social Security Act, set forth a number of revisions to our existing civil money penalty provisions and provided for three new grounds by which the OIG can levy CMPs.

1. *New CMP provisions.* Under the statute, a penalty, assessment and exclusion may be imposed for claims for physicians services where the individual (1) was not licensed as a physician, (2) was licensed but obtained such license through fraud or misrepresentation, or (3) falsely represented to a patient that he or she was certified in a medical specialty. Additionally, a penalty of up to $15,000 and an exclusion may be imposed on any person who gives false or misleading information relating to coverage of inpatient hospital services under the Medicare program that could reasonably be expected to influence the decision of when to discharge a person from the hospital. Finally, a penalty and exclusion may be imposed upon a person who requests payment in violation of an agreement not to charge patients for services denied as a result of a determination of an abuse of the prospective payment system.

2. *Technical changes.* Public Law 100–93 amended the notice, effective date, period of exclusion, scope of exclusion, and reinstatement provisions applicable where an exclusion has been imposed in addition to a CMP. These provisions are identical to the exclusion provisions imposed in accordance with section 1128 of the Social Security Act, and are described above in the preamble discussion relating to revisions to part 1001.

The Omnibus Budget Reconciliation Act of 1987 amended section 1128A by revising the standard of knowledge from "knows or has reason to know" to "knows or should know." This change is reflected in these proposed regulations. The Medicare Catastrophic Coverage Act further resulted in the need to incorporate a number of conforming and technical changes into the CMP regulations. All exclusions are now from Medicare and from the State health care programs.

In addition, the statute of limitations applicable to CMP cases has been revised to reflect violations that do not involve claims, and the definition of claim as well as the introductory language in section 1128A was revised. Additional changes to the CMP provisions relating to the provision of services during a period in which the individual was excluded would be revised under these regulations to incorporate all bases for exclusion and to make clear that unassigned claims are covered as well. Finally, the proposed regulations would implement the new section 1128A(1) of the Act which provides that a principal is liable for the acts of his or her agent when functioning within the scope of his or her agency.

Part 1004

In part 1004, Imposition of sanctions on health care practitioners and providers of health care services by a Peer Review Organization, § 1004.130 would be revised and § 1004.100(g) would be deleted in its entirety to be consistent with the proposed establishment of the new part 1005 regulations, as discussed below.

Part 1005

A new and separate part 1005, Appeals of exclusion, civil money penalties and assessments, would be established by revising and recodifying the various hearing procedures set forth in the existing OIG regulations. The new part 1005 would specifically govern administrative law judge (ALJ) hearings and subsequent appeals to the Secretary for all CMP and other OIG sanction cases.

At present, most exclusion proceedings are conducted under procedures set forth under 42 CFR 1001.107, 1001.128 and 1004.128. These sections incorporate by reference all or most of the appeal procedures contained in 42 CFR part 498. In addition, CMP proceedings—and exclusions imposed as a part of a CMP proceeding—are also conducted under procedures set forth in §§ 1003.111 through 1003.132 of the regulations. We are proposing to revise and consolidate these appeals procedures into a new 42 CFR part 1005. This revision and consolidation would serve to substantially simplify the duties of ALJs, attorneys and others who are involved in the administrative adjudication of various OIG cases.

The proposed new hearing regulations are modeled to a significant degree on the hearing and appeal procedures recently adopted by this Department for administrative adjudication of cases

under the Program Fraud Civil Remedies Act (PFCRA) (32 U.S.C. 3801 *et seq.*). The PFCRA regulations were published in final form on April 8, 1988 (53 FR 11656), and were based on the work product of an interagency task force under the direction of the President's Council on Integrity and Efficiency.

The following is a summary of the major elements proposed for inclusion in the new part 1005:

A. Rights of parties; authority of the ALJ

The provisions in §§ 1005.3 and 1005.4 would list the rights of the parties and the authorities of the ALJ not specifically provided in other sections of the regulations.

B. Hearing before an ALJ

The party against whom the OIG has imposed a CMP or exclusion—the "petitioner" in exclusion cases and the "respondent" in CMP cases—may, in writing, request a hearing following receipt of notice of the CMP or exclusion. The requirements for such notice are contained in the respective regulations that apply to each particular CMP or exclusion. If such party fails to file a timely request for a hearing, or thereafter withdraws or abandons his or her request for a hearing, the ALJ is required to dismiss the hearing request. In such a case, the CMP or exclusion would become final with no further appeal permitted.

C. Ex-parte contacts

The provisions in § 1005.5 are designed to ensure the fairness of the hearing by prohibiting ex-parte contacts with the ALJ on matters in issue.

D. Prehearing Conferences

The ALJ is required to schedule at least one prehearing conference. The experience of the OIG has shown that the prehearing conference narrows many of the outstanding issues to be addressed at the hearing and thus helps to expedite the formal hearing process.

E. Discovery

Limited discovery is provided in the form of production for inspection and copying of documents that are relevant and material to the issues before the ALJ. We are specifically proposing that all other forms of discovery, such as depositions and interrogatories, are not authorized. Prehearing discovery is not provided for under the Administrative Procedure Act (APA) and is rarely available in administrative hearings. We believe that full-scale discovery is inappropriate in administrative hearings since full discovery would unduly delay the streamlined administrative process. These regulations would, however, provide for exchange of relevant and material documents, as well as the exchange of witness lists, prior witness statements and exhibits prior to the hearing, as provided in proposed section 1005.8.

F. Exchange of Witness Lists, Statements and Exhibits

Section 1005.8 would provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses and copies of hearing exhibits. The ALJ would be able to exclude witnesses and documents offered by a party that did not provide such materials before the hearing, except where there is good cause for the failure, or where there is not substantial prejudice to the objecting party. These regulations would provide that the ALJ may recess the hearing for a reasonable time to allow the objecting party the opportunity to prepare and respond to such witnesses or exhibits. This procedure has been followed in the past in CMP cases and has worked successfully.

In addition, any documents exchanged prior to trial would be deemed authentic for purposes of admissibility at the hearing unless a party objected to a particular exhibit before the hearing.

G. Subpoenas

Proposed § 1005.9 would prescribe procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing, as authorized by statute.

H. Motions

The provisions of § 1005.13 set forth requirements for the content of motions and the time allowed for responses.

I. Sanctions

Section 1005.14 would expressly recognize an ALJ's authority to sanction parties and their representatives for failing to comply with an order or procedure, failing to defend an action, or other misconduct. These sanctions are modeled on those of the Merit System Protection Board at 5 CFR 1201.43, and on the regulations implementing PFCRA at 45 CFR 79.29. With respect to CMP cases commenced under section 1128A of the Social Security Act, these sanction authorities are specifically provided for by statute (42 U.S.C. 1320a–7a(c)(4)).

J. The Hearing and Burden of Proof

The burden of proof in ALJ proceedings is being allocated in the following manner. The "burden of proof" has two components—the burden of going forward and the burden of persuasion. The burden of going forward relates to the obligation to go forward initially with evidence that supports a prima facie case. The burden of going forward then shifts to the other party. In typical administrative litigation, the burden of persuasion relates to the obligation ultimately to convince the trier of fact that it is more likely than not that the position advocated is true. The party with the burden of persuasion loses in the situation where the evidence is in equipoise.

Proposed § 1005.15 would also recognize that the Department has the burden of persuasion in CMP cases with respect to issues of liability and the existence of any factors that might aggravate or increase the amount of penalties and assessments that may be imposed. Conversely, the respondent has the burden of persuasion with respect to affirmative defenses and any mitigating circumstances.

In exclusion cases, which concern the right of the petitioner to continue to participate in Medicare and in the State health care programs, the burden of proof is substantially different. Of course, the OIG would have the burden of going forward with evidence to present a prima facie case to support an exclusion. The burden of going forward then switches to the petitioner who also bears the burden of going forward with respect to affirmative defenses and any mitigating circumstances. The petitioner bears the burden of persuasion with respect to all issues; that is, it is up to the excluded individual or entity to persuade the ALJ that the exclusion is not supportable or that the period of exclusion is unreasonable.

The allocation of the burden of persuasion in exclusion cases is supported by the APA. Specifically, 5 U.S.C. 556(d) states that "[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof." The courts have interpreted section 556(d) as authorizing a split of the burden of proof; that is, the agency has the burden of going forward with the evidence, but the opposing party may bear the ultimate burden of persuasion. The Supreme Court in *N.L.R.B.* v. *Transportation Management Corp.*, 462 U.S. 393, 403, n.7 (1983) stated that section 556(d) "determines only the burden of going forward, not the burden of proof." (Also see *Environmental Defense Fund, Inc.* v. *E.P.A.*, 548 F.2d 998, 1004, n.14 (D.C. Cir. 9176), and *Old Ben Coal Corp.* v. *Interior Bd. of Mine Op. App.*, 523 F.2d 25, 39–40 (7th Cir. 1975)).

Finally, § 1005.15 would provide that the OIG is not limited at the trial to presentation of items or information that are set forth in the notice letter. As a practical matter in the past, ALJs have traditionally allowed petitioners and respondents to introduce evidence at a hearing that was relevant and material to the issues before the ALJ, irrespective of whether that evidence or issue is referred to in the notice letter. This provision is designed to ensure that the OIG is afforded the same opportunity to introduce items or information, as long as such items or information are relevant and material and otherwise admissible.

K. Witnesses

Under § 1005.16, the ALJ could allow testimony to be admitted in the form of a written statement or deposition so long as the opposing party has a sufficient opportunity to subpoena the person whose statement is being offered. Also, this section would allow an OIG investigator or medical expert to be a witness, in addition to assisting the counsel for the government at counsel table during the hearing. This policy comports with standard practice in federal court under Rule 615 of the Federal Rules of Evidence. Presence of the investigator or medical expert is analogous to the presence of an individual petitioner or respondent, or representaive of a corporate respondent, assisting counsel for the petitioner or respondent during the hearing.

L. Evidence

In § 1005.17, paragraphs (a)–(d) are being proposed to comply with Recommendation 86–2 of the Administrative Conference of the United States (1 CFR 305.86-2, 51 FR 25, 641, July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, generally binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence.

M. Post-Hearing Briefs

Section 1005.19 of these proposed regulations would indicate that it is within the ALJ's discretion to order post-hearing briefs, although the parties are entitled to file one if they desire.

N. Initial Decision

The proposed § 1005.20 would provide that not later than 60 days after the filing of final post-hearing briefs, the ALJ shall serve on the parties an initial decision making specific findings of fact and conclusions of law. The initial decision would become final within 60 days unless it is appealed timely.

O. Appeal of Initial Decision

Section 1005.21 would prescribe procedures for any party to appeal the initial decision to the Board by filing a notice of appeal within 45 days, with a possible extension of 15 days. There would be no appeal of an ALJ's interlocutory orders.

P. Stay of Initial Decision

Proposed regulations under § 1005.22 would recodify the provisions formerly located in § 1003.125(f)(5) with respect to a request for a stay of the payment of a CMP or assessment pending review by a U.S. Court of Appeals or the U.S. Supreme Court.

Q. Harmless Error

Section 1005.23 of these proposed regulations would adopt the harmless error rule that applies to civil federal litigation. It is modeled on Rule 61 of the Federal Rules of Civil Procedure.

Part 1006

A new part 1006 would be added to 42 CFR chapter V, and would address the implementation of the OIG's testimonial subpoena authority for investigations of cases under the CMP law. Public Law 100–93 authorized the Secretary to delegate to the Inspector General the authority under section 205(d) of the Act for the purposes of any investigation under section 1128A. Section 205(d) authorizes the issuance of a subpoena requiring the attendance and testimony of witnesses and the production of evidence.

With a delegation signed by the Secretary on April 26, 1988, the OIG has now been given the authority to subpoena witnesses as well as documents in investigations of CMP cases. This encompasses not only investigations involving potential violations set forth in section 1128A, but also in other sections of the Act that incorporate section 1128A(j), such as section 1842(j). As a result of congressional action in recent years, there are currently some 60 bases for monetary penalties relating to the Medicare and Medicaid programs that incorporate section 1128A(j). (The testimonial subpoena authority for CMP investigations is in addition to, and independent of, the OIG's subpoena authority for documents arising from 42 U.S.C. 3525. Part 1006 would neither apply to, nor limit, that authority in any way.)

Specifically, the proposed regulatory provisions in part 1006 would provide for the subpoenaing not only of named individuals, but of unnamed individuals associated with subpoenaed entities. A subpoenaed entity would be required to name an individual or individuals knowledgeable about the subjects on which information is sought. This procedure is similar to that provided for in Rule 30(b)(6) of the Federal Rules of Civil Procedure.

The taking of subpoenaed testimony, referred to as an investigational inquiry, would take place as provided in proposed § 1006.4. The Administrative Procedure Act provides that a person subpoenaed as a witness is entitled to be accompanied, represented and advised by an attorney (5 U.S.C. 555(b)). Testimony will be taken under oath or affirmation. The proposed regulations provide that any claim of privilege by a witness must be placed on the record by the witness himself or herself. Privileges applicable in investigational inquiries are federally-recognized privileges, as under Rule 501 of the Federal Rules of Evidence.

Since investigational inquiries are non-public investigatory proceedings, a witness' right to retain a copy of the transcript of his or her testimony may be limited for good cause (5 U.S.C. 555(c)). The witness, however, would be entitled to inspect the transcript.

Although the regulations in part 1006 are being set forth in proposed rulemaking, the OIG does not intend to postpone the use of the testimonial subpoena authority in the interim. The OIG will implement this authority in general conformity with these regulations.

Part 1007

Existing regulations addressing the State Medicaid Fraud Control Units, currently set forth in 42 CFR part 1003, subpart C, would be recodified into a new part 1007.

III. Additional Items for Public Comment

In addition to those proposed provisions set forth above, we are seeking public comment on the possible adoption of several other related changes to 42 CFR chapter V.

A. Revising the Definition of "Furnished"

We invite comments on whether the definition of the term "furnished" at 42 CFR 1001.2 should be amended to explicitly encompass medical device manufacturers, drug companies and others who may not participate directly in Medicare or State health care programs ("indirect participants"), but rather provide items or services to providers, practitioners or suppliers who directly participate in these programs ("direct participants"). If the term

"furnished" is defined narrowly, it may limit the effect of an exclusion from the Medicare and State health care programs.

For example, should the definition of "furnished" specifically cover an intraocular lens manufacturer who offers kickbacks to ophthamologists such that an exclusion under the kickback statute would actually have an effect on the manufacturer? Similarly, should the definition specifically cover a device manufacturer who is convicted of a health care related criminal offense so that the Department could refuse to pay for any item or service provided by that manufacturer to a direct participant? We invite commenters to recommend what modifications are necessary to include indirect participants in the ambit of the definition for "furnished."

B. Defining "Substantially in Excess" and "Usual Charges or Costs"

Proposed § 1001.701(a)(1) provides for the exclusion of individuals or entities that submit, or cause to be submitted, bills or requests for payment containing charges or costs that are "substantially in excess of" the "usual charges or costs" for such items or services. We are considering whether to define in regulations the terms "substantially in excess of" and "usual charges or costs," and we invite comment on whether defining these terms would be useful, and if so, what the appropriate definitions should be.

C. Inclusion of Rule 404(b) of the Federal Rules of Evidence

We are also soliciting comments on whether part 1005, containing the proposed rules for administrative adjudication of all OIG sanction cases, should be amended to specifically recognize and include Rule 404(b) of the Federal Rules of Evidence. Rule 404(b) allows for the introduction of evidence of "other crimes, wrongs or acts" for the purposes of proving knowledge, lack of mistake and existence of a scheme regardless of whether the acts occurred during the statute of limitations period applicable to the counts in issue in the case. We are also soliciting comments on whether it would be appropriate to clarify that proof of "other crimes, wrongs or acts" is an aggravating circumstance in OIG sanction cases.

D. Government-Wide Effect of Exclusions

To protect the interest of the Federal government and to insure proper management and integrity in Federal activities, Executive Orders 12549 and 12689, "Debarment and Suspension," provide that debarment, suspension, or other exclusion action taken by any Federal agency shall have government-wide effect. Accordingly, with respect to the effect of exclusions taken by this Department, we are proposing that § 1001.1901 will not only apply to participation in Medicare and State health care programs, but may also apply to all Federal nonprocurement health programs. We are soliciting comments on this specific approach as well as on the following alternative approaches for giving government-wide effect to OIG exclusions. Should the regulations provide that:

- Exclusions will apply to all Federal nonprocurement health programs;
- Exclusions may or will apply to all Federal nonprocurement programs;
- Exclusions may or will apply to all Federal procurement and nonprocurement programs?

IV. Regulatory Impact Statement

Introduction

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the Executive Order criteria for a "major rule," that is, that would be likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individuals, industries, Federal, State, 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. The analysis is intended to explain what effect the regulatory action by the agency will have on small businesses and other small entities, and to develop lower cost or burden alternatives.

Impact on Providers and Practitioners

We have determined that this rule is not a "major rule" under Executive Order 12291 as it is not likely to meet the criteria for having a significant economic impact. As indicated above, the proposed provisions contained in this rulemaking provide new authorities to the OIG to exclude a person or entity from Medicare and State health care programs, and to levy civil money penalties and assessments, if they are engaged in a prohibited activity or practice proscribed by statute. These provisions are a result of statutory changes and not this proposed rule, and serve to clarify departmental policy with respect to the imposition of exclusions, CMPs and assessments upon persons and entities who violate the statute. We believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices discussed in these regulations, and that the aggregate economic impact of these provisions should, in effect, be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent. As such, this rule should have no direct effect on the economy or on Federal or State expenditures.

Conclusion

For the reasons set forth above, we have determined that no regulatory impact analysis is required for these proposed regulations. In addition, while some penalties and assessments the Department could impose as a result of these regulations might have an impact on small entities, we do not anticipate that a substantial number of these small entities will be significantly affected by this rulemaking. Therefore, since we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a number of small business entities, we have not prepared a regulatory flexibility analysis.

V. Effect of NPRM on Pending Actions

Until the promulgation of final regulations, the Secretary intends that these proposed regulations shall provide guidance with respect to the imposition and adjudication of OIG sanctions.

List of Subjects

Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

Part 1002

Fraud, Grant programs—health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements.

Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties.

Part 1004

Administrative practice and procedure, Health facilities, Health professions, Medicare, Peer Review Organizations (PROs), Penalties, Reporting and recordkeeping requirements.

Part 1005

Administrative practice and procedure, Fraud, Penalties.

Part 1006

Administrative practice and procedure, Fraud, Investigations, Penalties.

Part 1007

Administrative practice and procedure, Fraud, Medicaid, Reporting and recordkeeping requirements.

TITLE 42—PUBLIC HEALTH

42 CFR chapter V would be amended as set forth below:

PART 1000—INTRODUCTION; GENERAL DEFINITIONS

A. Part 1000 would be amended as follows:

1. The authority citation for part 1000 would continue to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In subpart B, the introductory text of § 1000.10 is republished and § 1000.10 would be amended by adding a new definition for the term "beneficiary" to read as follows:

§ 1000.10 General definitions.

In this chapter, unless the context indicates otherwise—

* * * * *

Beneficiary means any individual eligible to have benefits paid to him or her, or on his or her behalf, under Medicare or any State health care program.

* * * * *

3. Section 1000.20 would be amended by removing the existing definition for the term "beneficiary."

B. Part 1001 would be revised to read as follows:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

Subpart A—General Provisions

Sec.

1001.1 Scope and purpose.
1001.2 Definitions.

Subpart B—Mandatory Exclusions

1001.101 Basis for liability.
1001.102 Length for exlusion.

Subpart C—Permissive Exclusions

1001.201 Conviction related to program or health care fraud.
1001.301 Conviction relating to obstruction of an investigation.
1001.401 Conviction relating to controlled substances.
1001.501 License revocation or suspension.
1001.601 Exclusion or suspension under a Federal or State health care program.
1001.701 Excessive claims or furnishing of unnecessary or substandard items and services.
1001.801 Failure of HMOs and CMPs to furnish medically necessary items and services.
1001.901 Civil money penalty exclusions.
1001.951 Fraud and kickbacks and other prohibited activities.
1001.1001 Exclusion of entities owned or controlled by a sanctioned individual.
1001.1101 Failure to disclose certain information.
1001.1201 Failure to provide payment information.
1001.1301 Failure to grant immediate access.
1001.1401 Violations of PPS corrective action.
1001.1501 Default of health education loan or scholarship obligations.
1001.1601 Violations of the limitations on physician charges.
1001.1701 Billing for services of assistant at surgery during cataract operations.

Subpart D—Waivers and effect of exclusion

1001.1801 Waivers of exclusions.
1001.1901 Effect of exclusion.

Subpart E—Notice and appeals

1001.2001 Notice of proposed exclusion.
1001.2002 Notice of exclusion.
1001.2003 Notice of intent to exclude.
1001.2004 Notice to State agencies.
1001.2005 Notice to State licensing agencies.
1001.2006 Notice to others regarding exclusion.
1001.2007 Appeal of exclusions.

Subpart F—Reinstatement into the programs

1001.3001 Timing and method of request for reinstatement.
1001.3002 Basis for reinstatement.
1001.3003 Approval of request for reinstatement.
1001.3004 Denial of request for reinstatement.
1001.3005 Reversed or vacated decisions.

Authority: Secs. 1102, 1128, 1128B, 1842(j), 1842(k), 1862(d), 1862(e), 1866(b)(2) (D), (E) and (F), and 1871 of the Social Security Act (U.S.C. 1302, 1320a-7, 1320a-7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh).

Subpart A—General Provisions

§ 1001.1 Scope and purpose.

The regulations in this part specify certain bases upon which individuals and entities may, or in some cases must, be excluded from participation in the Medicare and certain State health care programs. They also state the effect of exclusion, the factors that will be considered in determining the length of any exclusion, the provisions governing notices of exclusions, and the process by which an excluded individual or entity may seek reinstatement in the programs.

§ 1001.2 Definitions.

Controlled substance means:

(a) Drug or other substance, or immediate precursor, included in schedules I, II, III, IV or V of part B of subchapter I in 21 CFR chapter 13, or

(b) As defined by the law of any State.

Convicted means that—

(a) A judgment of conviction has been entered against an individual or entity by a Federal, State or local court, regardless of whether:

(1) There is a post-trial motion or an appeal pending or

(2) The judgment of conviction or other record relating to the criminal conduct has been expunged or dismissed;

(b) A Federal, State or local court has made a finding of guilt against an individual or entity;

(c) A Federal, State or local court has accepted a plea of guilty or nolo contendere by an individual or entity; or

(d) An individual or entity has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction has been withheld.

Professionally recognized standards of health care are Statewide or national standards of care, whether in writing or not, that professional peers of the individual, or other person whose care is in issue, recognize as applying to those peers practicing or providing care within a State. Where FDA, HCFA or PHS has declared a treatment modality not to be safe and effective, practitioners who employ such a treatment modality will be deemed not to meet professionally recognized standards of health care.

Sole community physician means a physician who is the only physician who provides primary care services within a health manpower shortage area designated by the Public Health Service for primary care. (See 42 CFR part 5 and Appendix A.)

Sole source of essential specialized services in the community means that an individual or entity—

(a) Is the only practitioner, supplier or provider furnishing specialized services in an area designated by the Public Health Service as a health manpower shortage area for that medical specialty, as listed in 42 CFR part 5, Appendices B through F;

(b) Is a sole community hospital, as defined in § 412.92 of this title;

(c) Is the only source for specialized services in a defined service area where services by a non-specialist could not be substituted for the source without jeopardizing the health or safety of beneficiaries.

State health care program means:

(a) A State plan approved under title XIX of the Act (Medicaid),

(b) Any program receiving funds under title V of the Act or from an allotment to a State under such title (Maternal and Child Health Block Grant program), or

(c) Any program receiving funds under title XX of the Act or from any allotment to a State under such title (Social Services Block Grant program).

State Medicaid Fraud Control Unit means a unit certified by the Secretary as meeting the criteria of 42 U.S.C. 1396b(q) and § 1002.305 of this chapter.

Subpart B—Mandatory Exclusions

§ 1001.101 Basis for liability.

The OIG shall exclude any individual or entity that—

(a) Has been convicted of a criminal offense related to the delivery of an item or service under Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program, or

(b) Has been convicted, under Federal or State law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the OIG concludes entailed, or resulted in, neglect or abuse of patients. The conviction need not relate to a patient who is a beneficiary.

§ 1001.102 Length of exclusion.

(a) No exclusion imposed in accordance with § 1001.101 shall be for less than 5 years.

(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(1) The acts resulting in the conviction, or similar acts, resulted in financial loss to Medicare and the State health care programs of $1500 or more. (The entire amount of financial loss to such programs will be considered including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made to the programs);

(2) The acts that resulted in the conviction, or similar acts, were committed over a period of one year or more;

(3) The acts that resulted in the conviction, or similar acts, had an adverse physical, mental or financial impact on one or more individuals;

(4) The sentence imposed by the court included incarceration;

(5) The convicted individual or entity has a prior criminal, civil or administrative sanction record; or

(6) The individual or entity has at any time been overpaid a total of $1500 or more by Medicare or State health care programs as a result of improper billings.

(c) Only if any of the aggravating factors set forth in paragraph (b) of this section justifies an exclusion longer than 5 years, may mitigating factors be considered as a basis for reducing the period of exclusion to no less than five years. Only the following factors may be considered mitigating—

(1) The individual or entity was convicted of three or fewer misdemeanor offenses, and the entire amount of financial loss to Medicare and the State health care programs due to the acts that resulted in the conviction, and similar acts, is less than $1500;

(2) The record in the criminal proceedings, including sentencing documents, demonstrates that the individual had a mental, emotional or physical condition before or during the commission of the offense that reduced the individual's culpability; or

(3) The individual's or entity's cooperation with Federal or State officials resulted in others being convicted or excluded from Medicare or any of the State health care programs.

Subpart C—Permissive Exclusions

§ 1001.201 Conviction related to program or health care fraud.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(1) In connection with the delivery of any health care item or service, or

(2) With respect to any act or omission in a program operated by, or fianced in whole or in part by, any Federal State or local government agency.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 5 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form a basis for lengthening or shortening that period.

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(i) The acts resulting in the conviction, or similar acts, resulted in financial loss of $1,500 or more to a government program or to one or more other individuals or entities. (The total amount of financial loss will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made.);

(ii) The acts that resulted in the conviction, or similar acts, were committed over a period of one or more years;

(iii) The acts that resulted in the conviction, or similar acts, had a significant adverse physical, mental or financial impact on individuals or on Medicare or any of the State health care programs;

(iv) The sentence imposed by the court included incarceration; or

(v) The convicted individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The individual or entity was convicted of 3 or fewer misdemeanor offenses, and the entire amount of financial loss to a government program or to other individuals or entities due to the acts that resulted in the conviction and similar acts is less than $1,500;

(ii) The record in the criminal proceedings, including sentencing documents, demonstrates that the individual had a mental, emotional or physical condition, before or during the commission of the offense, that reduced the individual's culpability;

(iii) The individual's or entity's cooperation with Federal or State officials resulted in others being convicted or excluded from Medicare or any of the State health care programs; or

(iv) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.301 Conviction relating to obstruction of an investigation.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of interference with, or obstruction of, any investigation into a criminal offense described in §§ 1001.101 and 1001.201.

(b) *Lenght of exclusion.* (1) An exclusion imposed in accordance with

this section will be for a period of 5 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form the basis for lengthening or shortening that period.

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(i) The interference with, or obstruction of, the criminal investigation caused the expenditure of significant additional time or resources;

(ii) The interference or obstruction had an adverse, mental, physical or financial impact on patients, witnesses, beneficiaries or on the Medicare or State health care programs;

(iii) The interference or obstruction also affected a civil or administrative investigation;

(iv) The sentence imposed by the court included incarceration; or

(v) The convicted individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period of exclusion—

(i) The record in the criminal proceedings, including sentencing documents, demonstrates that the individual had a mental, emotional or physical condition, before or during the commission of the offense, that reduced the individual's culpability;

(ii) The individual's or entity's cooperation with Federal or State officials resulted in others being convicted or excluded from Medicare or any of the State health care programs; or

(iii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.401 Conviction relating to controlled substances.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity convicted under Federal or State law of a criminal relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 5 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form the basis for lengthening or shortening that period.

(2) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—

(1) The acts that resulted in the conviction or similar acts were committed over a period of one year or more;

(ii) The acts that resulted in the conviction or similar acts had an adverse physical, mental or financial impact on beneficiaries or the Medicare or State health care programs;

(iii) The sentence imposed by the court included incarceration; or

(iv) The convicted individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for shortening the period of exclusion—

(i) The individual's or entity's cooperation with Federal or State officials resulted in others being convicted or excluded from Medicare or any other of the State health care programs; or

(ii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

§ 1001.501 License revocation or suspension.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity that has—

(1) Had a license to provide health care revoked or suspended by any State licensing authority, or has otherwise lost such a license, for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity; or

(2) Has surrendered such a license while a formal disciplinary proceeding concerning the individual's or entity's professional competence, professional performance or financial integrity was pending before a State licensing authority.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will never be for a period of time less than the period during which an individual's or entity's license is revoked, suspended or otherwise not in effect as a result of, or in connection with, a State licensing agency action.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The acts that resulted in the revocation, suspension or loss of the individual's or entity's license to provide health care had or could have had a significant adverse physical, emotional or financial impact on one or more individuals; or

(ii) The individual or entity has a prior criminal, civil or administrative sanction record.

(3) Only if any of the aggravating factors listed in paragraph (b)(2) of this section justifies a longer exclusion may mitigating factors be considered as a basis for reducing the period of exclusion to a period not less than that set forth in paragraph (b)(1) of this section. Only the following factors may be considered mitigating—

(i) The individual's or entity's cooperation with a State licensure authority resulted in the sanctioning of other individuals or entities; or

(ii) Alternative sources of the type of health care items or services furnished by the individual or entity are not available.

(4) When an individual or entity has been excluded under this section, the OIG will accept a request for reinstatement in accordance with § 1001.3001 if the individual or entity obtains a valid license in the State where the license was originally revoked, suspended, lost or surrendered.

§ 1001.601 Exclusion or suspension under a Federal or State health care program.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity suspended or excluded from participation, or otherwise sanctioned, under (1) any Federal program involving the provision of health care, or (2) a State health care program, for reasons bearing on the individual's or entity's professional competence, professional performance or financial integrity

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will never be for a period of time less than the period for which the individual or entity is suspended, excluded or otherwise sanctioned under the Federal or State health care program.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The period of exclusion, suspension or other sanction under the Federal or State health care programs does not properly take into account the adverse impact the individual's or entity's action had or could have on Medicare, the State health care programs or the beneficiaries of those programs; or

(ii) The individual or entity has a prior criminal, civil or administrative record.

(3) Only if any of the aggravating factors listed in paragraph (b)(2) of this section justifies an exclusion longer than the period of suspension, exclusion or other sanction imposed by the Federal or State health care program, may mitigating factors be considered as a basis for reducing the period of exclusion. Only the following factors may be considered mitigating—

(i) The individual's or entity's cooperation with Federal or State officials resulted in the sanctioning of other individuals or entities; or

(ii) Alternative sources of the types of health care items or services furnished by the individual or entity are not available.

(4) The OIG will accept a request for reinstatement in accordance with § 1001.3001 when the individual or entity is reinstated by the Federal or State health care program that originally imposed the suspension, exclusion or other sanction.

§ 1001.701 Excessive claims or furnishing of unnecessary or substandard items and services.

(a) *Circumstance for exclusion.* The OIG may exclude an individual or entity that has—

(1) Submitted, or caused to be submitted, bills or requests for payments under Medicare or any of the State health care programs containing charges or costs for items or services furnished that are substantially in excess of the usual charges or costs for such items or services; or

(2) Furnished, or caused to be furnished, to patients (whether or not covered by Medicare or any of the State health care programs) any items or services substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care.

(b) *Exceptions.* An individual or entity will not be excluded for—

(1) Bills or requests for payment that contain charges or costs substantially in excess of usual charges or costs when such charges or costs are due to unusual circumstances or medical complications requiring additional time, effort, expense or other good cause; or

(2) Furnishing items or services in excess of the needs of patients, when the items or services were ordered by a physician, and the individual or entity furnishing the items or services was not in a position to determine medical necessity or to refuse to comply with the physician's order.

(c) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 5 years, unless aggravating or mitigating factors listed in paragraphs (c)(2) and (c)(3) of this section form a basis for lengthening or shortening the period.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The violations were serious in nature, and occurred over a period of one year or more;

(ii) The violations had a significant adverse physical, mental or financial impact on patients or beneficiaries;

(iii) The individual or entity has a prior criminal, civil or administrative sanction record; or

(iv) The violation resulted in financial loss to Medicare and the State health care programs of $1,500 or more.

(3) Only the following factors may be considered mitigating and a basis for reducing the period of exclusion—

(i) The violations had no adverse physical, mental or financial impact on individuals, or on Medicare or State health care programs; or

(ii) Alternative sources of the type of health care items or services furnished by the indivdiual or entity are not available.

§ 1001.801 Failure of HMOs and CMPs to furnish medically necessary items and services.

(a) *Circumstances for exclusion.* The OIG may exclude an entity—

(1) That is a—

(i) Health maintenance organization, as defined in section 1903(m) of the Act, providing items or services under a State Medicaid Plan;

(ii) Primary care case management system providing services, in accordance with a waiver approved under section 1915(b)(1) of the Act; or

(iii) Health maintenance organization or competitive medical plan providing items or services in accordance with a risk-sharing contract under section 1876 of the Act;

(2) That has failed substantially to provide medically necessary items and services that are required under law or contract to be provided to individuals covered by a plan, waiver or contract; and

(3) Where such failure has adversely affected or has a substantial likelihood of adversely affecting covered individuals.

(b) *Length of exclusion.* (1) An exclusion imposed in accordance with this section will be for a period of 5 years, unless aggravating or mitigating factors listed in paragraphs (b)(2) and (b)(3) of this section form a basis for lengthening or shortening the period.

(2) Any of the following factors may be considered aggravating and a basis for lengthening the period of exclusion—

(i) The entity failed to provide a large number or a variety of items or services;

(ii) The failures occurred over a lengthy period of time;

(iii) The entity's failure to provide a necessary item or service had or could have had a serious adverse effect; or

(iv) The entity has a criminal, civil or administrative sanction record.

(3) Only the following factors may be considered as mitigating and a basis for reducing the period fo exclusion—

(i) There were few violations and they occurred over a short period of time; or

(ii) Alternative sources of the type of health care items or services furnished by the entity are not available.

§ 1001.901 Civil money penalty exclusions.

(a) *Circumstance for exclusion.* The OIG may exclude any individual or entity that it determines has committed an act described in section 1128A of the Act. The imposition of a civil money penalty or assessment is not a prerequisite for an exclusion under this section.

(b) *Length of exclusion.* In determining the length of an exclusion imposed in accordance with this section, the OIG will consider the following factors—

(1) The nature and circumstances surrounding the actions that are the basis for liability, including the period of time over which the acts occurred, the number of acts, whether there is evidence of a pattern and the amount claimed;

(2) The degree of culpability;

(3) The individual's or entity's prior criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(4) Other matters as justice may require.

§ 1001.951 Fraud and kickbacks and other prohibited activities.

(a) *Circumstance for exclusion.* (1) Except as provided for in paragraph (a)(2)(ii) of this section, the OIG may exclude any individual or entity that it determines has committed an act described in section 1128B of the Act.

(2) With respect to acts described in section 1128B of the Act, the OIG—

(i) May exclude any individual or entity that it determines has knowingly and willfully solicited, received, offered or paid any remuneration in the manner and for the purposes described therein, irrespective of whether the individual or entity may be able to prove that the remuneration was also intended for some other purpose; and

(ii) Will not exclude any individual or entity if that individual or entity can prove that the remuneration that is subject of the exclusion is exempted from serving as the basis for an exclusion.

(b) *Length of exclusion.* (1) The following factors will be considered in determining the length of exclusion in accordance with this section—

(i) The nature and circumstances of the acts and other similar acts;

(ii) The nature and extent of any adverse physical, mental, financial or other impact the conduct had on

beneficiaries or the Medicare or State health programs;

(iii) The excluded individual's or entity's prior criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(iv) Any other facts bearing on the nature and seriousness of the individual's or entity's misconduct.

(2) It shall be considered a mitigating factor if—

(i) The individual had a documented mental, emotional, or physical condition before or during the commission of the prohibited act(s) that reduced the individual's culpability for the acts in question;

(ii) The individual's or entity's cooperation with Federal or State officials resulted in the sanctioning of other individuals or entities; or

(iii) Alternative sources of the type of health care items or services provided by the individual or entity are not available.

§ 1001.1001 Exclusion of entities owned or controlled by a sanctioned individual.

(a) *Circumstance for exclusion.* (1) The OIG may exclude any entity in which a person within such entity who:

(i) Has been convicted of a criminal offense as described in sections 1128(a) and 1128(b) (1), (2), or (3) of the Act;

(ii) Has had money penalties imposed under section 1128A of the Act; or

(iii) Has been excluded from participation in Medicare or any of the State health care programs—

(A) Has a direct or indirect interest (or any combination thereof) of 5 percent or more in the entity;

(B) Is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, in which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity;

(C) Is an officer or director of the entity, if the entity is organized as a corporation;

(D) Is a partner in the entity, if the entity is organized as a partnership;

(E) Is an agent of the entity; or

(F) Is a managing employee, that is, an individual (including a general manager, business manager, administrator or director) who exercises operational or managerial control over the entity, or directly or indirectly conducts the day-to-day operations of the entity.

(2) For purposes of this section, the term:

Indirect ownership interest includes an ownership interest through any other entities that ultimately have an ownership interest in the entity in issue. (For example, an individual has a 10 percent ownership interest in the entity at issue if he or she has a 20 percent ownership interest in a corporation that wholly owns a subsidiary that is a 50 percent owner of the entity in issue.)

Ownership interest includes an interest in:

(i) The capital, the stock or the profits of the entity, or

(ii) Any mortgage, deed, trust or note, or other obligation secured in whole or in part by the property or assets of the entity.

(b) *Length of exclusion.* (1) Except as provided in § 1001.3002(c), exclusions under this section will be for the same period as that of the individual whose relationship with the entity is the basis for this exclusion, if the individual has been or is being excluded.

(2) If the individual was not excluded, the length of the entity's exclusion will be determined by considering the factors that would have been considered if the individual had been excluded.

(3) An entity excluded under this section may apply for reinstatement at any time in accordance with the procedures set forth in § 1001.3001(a)(2).

§ 1001.1101 Failure to disclose certain information.

(a) *Circumstance for exclusion.* The OIG may exclude any entity that did not fully and accurately, or completely, make disclosures as required by part 455, subpart B and part 420, subpart C of this title.

(b) *Length of exclusion.* The following factors will be considered in determining the length of an exclusion under this section—

(1) The number of instances where full and accurate, or complete, disclosure was not made;

(2) The significance of the disclosed information;

(3) The entity's prior criminal, civil and administrative sanction record (the lack of any prior record is to be considered neutral);

(4) Any other facts that bear on the nature or seriousness of the conduct;

(5) The availability of alternative sources of the type of health care services provided by the entity; and

(6) The extent to which the entity knew that the disclosures made were not full or accurate.

§ 1001.1201 Failure to provide payment information.

(a) *Circumstance for exclusion.* The OIG may exclude any individual or entity that furnishes items or services for which payment may be made under Medicare or any of the State health care programs and that:

(1) Fails to provide such information as is necessary to determine whether such payments are or were due and the amounts thereof, or

(2) Has refused to permit such examination and duplication of its records as may be necessary to verify such information.

(b) *Length of exclusion.* The following factors will be considered in determining the length of an exclusion under this section—

(1) The number of instances where information was not provided;

(2) The circumstances under which such information was not provided;

(3) The amount of the payments at issue;

(4) The individual's or entity's criminal, civil or administrative sanction record (the lack of any prior record is to be considered neutral); and

(5) The availability of alternative sources of the type of health care items or services provided by the individual or entity.

§ 1001.1301 Failure to grant immediate access.

(a) *Circumstance for exclusion.* (1) The OIG may exclude any individual or entity that fails to grant immediate access upon reasonable request to—

(i) The Secretary, a State survey agency or other authorized entity for the purpose of determining, in accordance with section 1864(a) of the Act, whether—

(A) An institution is a hospital or skilled nursing facility;

(B) An agency is a home health agency;

(C) An agency is a hospice program;

(D) A facility is a rural health clinic as defined in section 1861(aa)(2) of the Act, or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2) of the Act;

(E) A laboratory is meeting the requirements of section 1861(s) (12) and (13) of the Act;

(F) A clinic, rehabilitation agency or public health agency is meeting the requirements of section 1861(p)(4) (A) or (B) of the Act; or

(G) An ambulatory surgical center is meeting the standards specified under section 1832(a)(2)(F)(i) of the Act;

(ii) The Secretary, a State survey agency or other authorized entity to perform the reviews and surveys required under State plans in accordance with sections 1902(a)(26) (relating to inpatient mental hospital services), 1902(a)(31) (relating to skilled nursing and intermediate care facilities), 1902(a)(33) and 1903(g) of the Act;

(iii) The OIG for the purposes of reviewing records, documents and other data necessary to the performance of the Inspector General's statutory functions; or

(iv) A State Medicaid fraud control unit for the purpose of conducting its activities.

(2) For purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of the section, the term—

Failure to grant immediate access means the failure to grant access at the time of a reasonable request;

Reasonable request means a request made by a properly identified agent of the Secretary, of a State survey agency or of another authorized entity, during hours that the facility, agency or institution is open for business.

(3) For purposes of paragraphs (a)(1)(iii) and (a)(1)(iv) of this section, the term—

Failure to grant immediate access means:

(i) Except where the OIG or State Medicaid fraud control unit has reason to believe that requested documents are about to be altered or destroyed, the failure to produce or make available for inspection and copying requested records upon reasonable request, or to provide a compelling reason why they cannot be produced, within 24 hours of such request; or

(ii) Where the OIG or State Medicaid fraud control unit has reason to believe that requested documents are about to be altered or destroyed, the failure to provide access to requested records at the time the request is made.

Reasonable request means a request in writing by a properly identified agent of the OIG or a State Medicaid fraud control unit, where there is information to suggest that the individual or entity has violated statutory or regulatory requirements under titles V, XVIII, XIX or XX of the Act.

(4) Nothing in this section shall in any way limit access otherwise authorized under State or Federal law.

(b) *Length of exclusion.* (1) An exclusion of an individual under this section may be for a period equal to the sum of:

(i) The length of the period during which the immediate access was not granted, and

(ii) An additional period of up to 90 days.

(2) The length of the period in which immediate access was not granted will be measured from the time the request is made, or from the time by which access was required to be granted, whichever is later.

(3) The exclusion of an entity may be for a longer period than that established in paragraph (b)(2) of this section based on consideration of the following factors—

(i) The impact of the failure to grant the requested immediate access of Medicare or any of the State health care programs, beneficiaries or the public;

(ii) The circumstances under which such access was refused;

(iii) The impact of the exclusion on Medicare or any of the State health care programs, beneficiaries or the public; and

(iv) The entity's prior criminal, civil or administrative sanction record. (The lack of any prior record is to be considered neutral.)

§ 1001.1401 Violations of PPS corrective action.

(a) *Circumstance for exclusion.* The OIG may exclude any hospital that HCFA determines has failed substantially to comply with a corrective action required by HCFA under section 1886(f)(2)(B) of the Act.

(b) *Length of exclusion.* The following factors will be considered in determining the length of exclusion under this section—

(1) The impact of the hospital's failure to comply on Medicare or any of the State health care programs, beneficiaries or the public;

(2) The circumstances under which the failure occurred;

(3) The nature of the failure to comply;

(4) The impact of the exclusion on Medicare or any of the State health care programs, beneficiaries or the public; and

(5) The hospital's prior criminal, civil or administrative sanction record. (The lack of any prior record is to be considered neutral.)

§ 1001.1501 Default of health education loan or scholarship obligations.

(a) *Circumstance for exclusion.* (1) The OIG may exclude any individual that the Public Health Service determines—

(i) Is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured in whole or in part by the Secretary; and

(ii) Is not a sole community physician or sole source of essential specialized services in the community.

(2) The OIG must determine that the Public Health Service has taken all reasonable administrative steps to secure repayment of the loans or obligations.

(b) *Length of exclusion.* The individual will be excluded until such time as the Public Health Service notifies the OIG that the default has been cured or the obligations have been resolved to the PHS's satisfaction. Upon such notice, the OIG will inform the individual of his or her right to request reinstatement.

§ 1001.1601 Violations of the limitations on physician charges.

(a) *Circumstance for exclusion.* (1) The OIG may exclude a physician whom it determines, for any period beginning on or after January 1, 1987—

(i) Is a non-participating physician under section 1842(h) of the Act;

(ii) Furnished services to a beneficiary; and

(iii) Knowingly and willfully billed for such services actual charges in excess of the maximum allowable actual charges determined in accordance with section 1842(j)(1)(C) of the Act.

(2) An exclusion under this section is limited to the Medicare program.

(b) *Length of exclusion.* (1) In determining the length of an exclusion in accordance with this section, the OIG will consider the following factors—

(i) The number of services for which the physician billed in excess of the maximum allowable charges;

(ii) The number of beneficiaries for whom services were billed in excess of the maximum allowable charges;

(iii) The amount of the charges that were in excess of the maximum allowable charges;

(iv) The physician's prior criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(v) The availability of alternative sources of the type of health care items or services furnished by the physician.

(2) The period of exclusion may not exceed 5 years.

§ 1001.1701 Billing for services of assistant at surgery during cataract operations.

(a) *Circumstance for exclusion.* The OIG may exclude a physician whom it determines—

(1) Has knowingly and willfully presented or caused to be presented a claim, or billed an individual enrolled under part B of the Medicare program for:

(i) Services of an assistant at surgery during a cataract operation, or

(ii) Charges that include a charge for an assistant at surgery during a cataract operation; and

(a) Has not obtained prior approval for the use of such assistant from the appropriate Peer Review Organization (PRO) or Medicare carrier.

(b) *Length of exclusion.* (1) In determining the length of an exclusion in

accordance with this section, the OIG will consider the following factors—

(i) The number of instances for which claims were submitted or beneficiaries were billed for unapproved use of assistants during cataract operations;

(ii) The amount of claims or bills presented;

(iii) The circumstances under which the claims or bills were made;

(iv) Whether approval for the use of an assistant was requested from the PRO or carrier;

(v) The physician's criminal, civil or administrative sanction record (The lack of any prior record is to be considered neutral); and

(vi) The availability of alternative sources of the type of health care items or services furnished by the physician.

(2) The period of exclusion may not exceed 5 years.

Subpart D—Waivers and Effect of Exclusion

§ 1001.1801 Waivers of exclusions.

(a) The OIG has the authority to grant or deny a request from a State health care program that an exclusion from that program be waived with respect to an individual or entity, except that no waiver may be granted with respect to an exclusion under § 1001.101(b).

(b) A request from a State health care program for a waiver of the exclusion will only be considered if the individual or entity is the sole community physician or the sole source of essential specialized services in a community.

(c) If the basis for the waiver ceases to exist, the waiver will be rescinded, and the individual or entity will be excluded for the period remaining on the exclusion, measured from the time the exclusion would have been imposed if the waiver had not been granted.

(d) In the event a waiver is granted, it is applicable only to the State health care program that requested the waiver.

(e) The decision to grant, deny or rescind a request for a waiver is not subject to administrative or judicial review.

(f) The Inspector General may waive the exclusion of an individual or entity from participation in the Medicare program in conjunction with granting a waiver requested by a State health care program.

§ 1001.1901 Effect of exclusion.

(a) Except as otherwise provided, exclusions will be from Medicare and all of the State health care programs. The OIG will exclude the individual or entity from the Medicare program and direct each State agency administering a State health care program to exclude the individual or entity for the same period. In the case of an individual or entity not eligible to participate in Medicare, the exclusion will still be effective on the date, and for the period, established by the OIG.

(b) Except as otherwise provided in this section, no payment will be made by Medicare or any of the State health care programs for any item or service furnished, on or after the effective date specified in the notice period, by an excluded individual or entity, or at the medical direction or on the prescription of a physician who is excluded when the person furnishing such item or service knew or had reason to know of the exclusion.

(c) An excluded individual or entity may not take assignment of an enrollee's claim on or after the effective date of exclusion.

(d) (1) If an enrollee of part B of Medicare submits an otherwise payable claim for items or services furnished by an excluded individual or entity, or under the medical direction or on the prescription of an excluded physician after the effective date of exclusion, HCFA will pay the first claim submitted by the enrollee and immediately notify the enrollee of the exclusion.

(2) HCFA will not pay an enrollee for items or services furnished by an excluded individual or entity, or under the medical direction or on the prescription of an excluded physician more than 15 days after the date on the notice to the enrollee, or after the effective date of the exclusion, whichever is later.

(e) Unless the Secretary determines that the health and safety of beneficiaries receiving services under Medicare or a State health care program warrants the exclusion taking effect earlier, payment may be made under such program for up to 30 days after the effective date of the exclusion for—

(1) Inpatient institutional services furnished to an individual who was admitted to an excluded institution before the date of the exclusion, and

(2) Home health services and hospice care furnished to an individual under a plan of care established before the effective date of exclusion.

(f)(1) Notwithstanding the other provisions of this section, payment may be made under Medicare or a State health care program for certain emergency items or services furnished by an excluded individual or entity, or at the medical direction or on the prescription of an excluded physician during the period of exclusion. To be payable, a claim for such emergency items or services must be accompanied by a sworn statement of the person furnishing the items or services specifying the nature of the emergency and why the items or services could not have been furnished by an individual or entity eligible to furnish or order such items or services.

(2) Notwithstanding paragraph (f)(1) of this section, no claim for emergency items or services will be payable if such items or services were provided by an excluded individual who, through an employment, contractual or any other arrangement, routinely provides emergency health care items or services.

Subpart E—Notice and Appeals

§ 1001.2001 Notice of proposed exclusion.

(a) Except as provided in paragraph (b) of this section and in § 1001.2003, if the OIG proposes to exclude an individual or entity in accordance with Subpart C of this part, it will send written notice of its intent, and the basis for the proposed exclusion. Within 30 days of receipt of notice, which will be deemed to be 5 days after the date on the notice, the individual or entity may submit documentary evidence and written argument in response.

(b) If the OIG proposes to exclude an individual or entity in accordance with §§ 1001.701 or 1001.801, it will send written notice of its intent, and the basis for proposed exclusion. Within 30 days of receipt of the notice, which will be deemed to be 5 days from the date on the notice, the individual or entity may submit:

(1) Documentary evidence and written argument against the proposed action, and

(2) A written request to present evidence or argument orally to an OIG official.

(c) If an entity has a provider agreement under section 1866 of the Act, and the OIG proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice provided for in paragraphs (a) and (b) of this section will so state.

§ 1001.2002 Notice of exclusion.

(a) If the OIG determines that exclusion is warranted after consideration of information received in accordance with § 1001.2001, or in instances of exclusion under subpart B of this part, it will send a written notice of this decision to the affected individual or entity.

(b) The exclusion will be effective 20 days from the date of the notice.

(c) The written notice will state—

(1) The basis for the exclusion;

(2) The length of the exclusion and, where applicable, the factors considered in setting the length;

(3) The effect of the exclusion;

(4) The earliest date on which the OIG will accept a request for reinstatement;

(5) The requirements and procedures for reinstatement; and

(6) The appeal rights available to the excluded individual or entity.

§ 1001.2003 Notice of intent to exclude.

(a) Except as provided in paragraph (c) of this section, if the OIG intends to exclude an individual in accordance with §§ 1001.901 and 1001.951, it will send written notice of its intent, the basis for the exclusion and its length. If an entity has a provider agreement under section 1866 of the Act, and the OIG also proposes to terminate that agreement in accordance with section 1866(b)(2)(C) of the Act, the notice will so indicate. Within 60 days, the individual may file a written request for a hearing in accordance with Part 1005 of this chapter. Such request must set forth—

(1) The specific issues or statements in the notice with which the individual or entity disagrees;

(2) The basis for that disagreement;

(3) The defenses on which reliance is intended;

(4) Any reasons why the proposed length of exclusion should be modified; and

(5) Reasons why the health and safety of individuals receiving services under Medicare or any of the State health care programs does not warrant the exclusion going into effect prior to the completion of an ALJ proceeding in accordance with part 1005 of this chapter.

(b) (1) If the individual or entity does not make a written request for a hearing as provided for in paragraph (a) of this section, the OIG will send a notice of exclusion as described in § 1001.2002 (b) and (c).

(2) If the individual or entity makes a timely written request for a hearing and the OIG determines that the health or safety of individuals receiving services under Medicare or any of the State health care programs does not warrant an immediate exclusion, an exclusion will not go into effect before an ALJ upholds the determination to exclude.

(c) If the OIG determines that the health or safety of individuals receiving services under Medicare or any of the State health care programs warrants the exclusion taking place prior to the completion of an ALJ proceeding in accordance with part 1005 of this chapter, the OIG will proceed under §§ 1001.2001 and 1001.2002.

§ 1001.2004 Notice to State agencies.

HHS will promptly notify each appropriate State agency administering or supervising the administration of each State health care program of:

(a) The facts and circumstances of each exclusion, and

(b) The period for which the State agency is being directed to exclude the individual or entity.

§ 1001.2005 Notice to State licensing agencies.

(a) HHS will promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation of the facts and circumstances of the exclusion.

(b) HHS will request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and will request that the State or local agency or authority keep the Secretary and the OIG fully and currently informed with respect to any actions taken in response to the request.

§ 1001.2006 Notice to others regarding exclusion.

(a) HHS will give notice of the exclusion and the effective date to the public, to beneficiaries (in accordance with § 1001.1901(d), and, as appropriate, to—

(1) Any entity in which the excluded individual or entity is known to be serving as an employee, administrator, operator, or in which the individual or entity is serving in any other capacity and is receiving payment for providing services (the lack of this notice will not affect HCFA's ability to deny payment for services);

(2) State Medicaid Fraud Control Units;

(3) Peer Review Organizations;

(4) Hospitals, skilled nursing facilities, home health agencies and health maintenance organizations;

(5) Medical societies and other professional organizations;

(6) Contractors, health care prepayment plans and other affected agencies and organizations;

(7) The State and Area Agencies on Aging established under title III of the Older Americans Act; and

(8) Any other agencies or organizations as required.

(b) In the case of an exclusion in accordance with § 1001.101 of this chapter and to which it may apply to section 304(a)(5) of the Controlled Substances Act (21 U.S.C. 824(a)(5)), HHS will give notice to the Attorney General of the United States of the facts and circumstances of the exclusion and the length of the exclusion.

§ 1001.2007 Appeal of exclusions.

(a) An individual or entity excluded under this part may file a request for a hearing before an ALJ on the issues of whether:

(1) The basis for the imposition of the sanction exists, and

(2) The length of exclusion is unreasonable.

(b) Except as provided in § 1001.2003, the excluded individual or entity has 60 days from the receipt of notice of exclusion provided for in § 1001.2002 to file a request for such a hearing.

(c) The standard of proof is preponderance of the evidence.

(d) When the exclusion is based on the existence of a conviction, a determination by another government agency or any other prior determination, the basis for the underlying determination is not reviewable and the individual or entity may not collaterally attack the underlying determination, either on substantive or procedural grounds, in this appeal.

(e) The procedures in part 1005 of this chapter will apply to the appeal.

Subpart F—Reinstatement into the Programs

§ 1001.3001 Timing and method of request for reinstatement.

(a) (1) Except as provided in paragraph (a)(2) of this section or in §§ 1001.501(b)(4) and 1001.601(b)(4), an excluded individual or entity (other than those excluded in accordance with § 1001.1001) may submit a written request for reinstatement to the OIG only after the date specified in the notice of exclusion.

(2) An entity under § 1001.1001 may apply for reinstatement prior to the date specified in the notice of exclusion by submitting a written request for reinstatement that includes documentation demonstrating that the standards set forth in § 1001.3002(c) have been met.

(3) Upon receipt of a written request, the OIG will require the requestor to furnish specific information and authorization to obtain information from private health insurers, peer review bodies, probation officers, professional associates, investigative agencies and such others as may be necessary to determine whether reinstatement should be granted.

(4) Failure to furnish the required information or authorization will result in the continuation of the exclusion.

(b) If a period of exclusion is reduced on appeal (regardless of whether further appeal is pending), the individual or entity may request reinstatement once the reduced exclusion period expires.

§ 1001.3002 Basis for reinstatement.

(a) Except as provided in paragraph (c) of this section, the OIG will not authorize reinstatement unless—

(1) The period of exclusion has expired;

(2) There are reasonable assurances that the types of actions that formed the basis for the original exclusion have not recurred and will not recur; and

(3) There is no additional basis under sections 1128 (a) or (b) or 1128A of the Act for continuation of the exclusion.

(b) In making the reinstatement determination, the OIG will consider—

(1) Conduct of the individual or entity occurring prior to the date of the notice of exclusion, if not known to the OIG at the time of the exclusion;

(2) Conduct of the individual or entity after the date of the notice of exclusion;

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare or any of the State health care programs, have been paid or satisfactory arrangements have been made to fulfill these obligations; and

(4) Whether HCFA has determined that the individual or entity complies with, or has made satisfactory arrangements to fulfill, all of the applicable conditions of participation or supplier conditions for coverage under the statutes and regulations.

(c) An entity excluded in accordance with § 1001.1001 will be reinstated upon a determination by the OIG that the individual whose conviction, exclusion or civil money penalty was the basis for the entity's exclusion—

(1) Has reduced his or her ownership or control interest in the entity below 5 percent;

(2) Is no longer an officer, director, agent or managing employee of the entity; or

(3) Has been reinstated in accordance with paragraph (a) of this section or § 1001.3005.

(d) Reinstatement will not be effective until OIG grants the request and provides notice under § 1001.3003(a)(1). Reinstatement will be effective as provided in the notice.

(e) A determination with respect to reinstatement is not appealable or reviewable except as provided in § 1001.3004.

§ 1001.3003 Approval of request for reinstatement.

(a) If the OIG grants a request for reinstatement, HHS will—

(1) Give written notice to the excluded individual or entity specifying the date when Medicare participation may resume;

(2) Notify State agencies that administer the State health care programs that the individual or entity has been reinstated into the Medicare program; and

(3) To the extent possible, give notice to those agencies, groups, individuals and others that were originally notified of the exclusion.

(b) If the OIG makes a determination to reinstate an individual or entity under Medicare, the State health care program upon notification from the OIG must automatically reinstate the individual or entity under such program, effective on the date of reinstatement under Medicare, unless—

(1) Reinstatement is not available to such excluded party under State law, or

(2) A longer exclusion period was established in accordance with the State's own authorities and procedures.

§ 1001.3004 Denial of request for reinstatement.

(a) If a request for reinstatement is denied, OIG will give written notice to the requesting individual or entity. Within 30 days of the date on the notice, the excluded individual or entity may submit:

(1) Documentary evidence and written argument against the continued exclusion, or

(2) A written request to present written evidence and oral argument to an OIG official.

(b) After evaluating any additional evidence submitted by the excluded individual or entity (or at the end of the 30-day period, if none is submitted), the OIG will send written notice either confirming the denial, and indicating that a subsequent request for reinstatement will not be accepted until one year after the date of denial, or consistent with the procedures set forth in § 1001.3003(a).

(c) The decision to deny reinstatement will not be subject to administrative or judicial review.

§ 1001.3005 Reversed or vacated decisions.

(a) An individual or entity will be reinstated into the Medicare program retroactive to the effective date of the exclusion when such exclusion is based on—

(1) A conviction that is reversed or vacated on appeal; or

(2) An action by another agency, such as a State agency or licensing board, that is reversed or vacated on appeal.

(b) HCFA will make payment for payable services covered under Medicare that were furnished or performed during the period of exclusion.

(c) The OIG will give notice of a reinstatement under this section in accordance with § 1001.3003(a).

(d) An action taken by OIG under this section will not require any State health care program to reinstate the individual or entity if it has imposed an exclusion under its own authority.

C. Part 1002 would be revised to read as follows:

PART 1002—PROGRAM INTEGRITY—STATE-INITIATED EXCLUSIONS FROM MEDICAID

Subpart A—General Provisions

Sec.

1002.1 Scope and purpose.
1002.2 General authority.
1002.3 Disclosure by providers; information on persons convicted of crimes.
1002.100 State plan requirement.

Subpart B—Mandatory Exclusion

1002.203 Mandatory exclusion.

Subpart C—Permissive Exclusions

1002.210 Permissive exclusions; general authority.
1002.211 Effect of exclusion.
1002.212 State agency notifications.
1002.213 Appeals of exclusions.
1002.214 Basis for reinstatement after State agency-initiated exclusion.
1002.215 Action on request for reinstatement.

Subpart D—Notification to OIG of State or Local Convictions of Crimes Against Medicaid

1002.230 Notification of State or local convictions of crimes against Medicaid.

Authority: Secs. 1102, 1124, 1126, 1128, 1902(a)(4)(A), 1902(a)(30), 1902(a)(39), 1903(a)(6), 1903(b)(3), 1903(i)(2) and 1903(q) of the Social Security Act (42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396a(30), 1396a(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) and 1396b(q)).

Subpart A—General Provisions

§ 1002.1 Scope and purpose.

The regulations in this part specify certain bases upon which individuals and entities may, or in some cases must, be excluded from participation in the Medicaid program. These regulations specifically address the authority of State agencies to exclude on their own initiative, regardless of whether the OIG has excluded an individual or entity under part 1001 of this chapter. These regulations also delineate the States'

obligation to inform the OIG of certain Medicaid-related convictions.

§ 1002.2 General authority.

(a) In addition to any other authority it may have, a State may exlcude an individual or entity from participation in the Medicaid program for any reason for which the Secretary could exclude that individual or entity from participation in the Medicare program under sections 1128, 1128A or 1866(b)(2) of the Social Security Act.

(b) Nothing contained in this part should be construed to limiting State's own authority to exclude an individual or entity from Medicaid for any reason or period authorized by State law.

§ 1002.3 Disclosure by providers; information on persons convicted of crimes.

(a) *Information that must be disclosed.* Before the Medicaid agency enters into or renews a provider agreement, or at any time upon written request by the Medicaid agency, the provider must disclose to the Medicaid agency the identity of any person described in § 1001.1001(a)(1) of this chapter.

(b) *Notification to Inspector General.* (1) The Medicaid agency must notify the Inspector General of any disclosures made under paragraph (a) of this section within 20 working days from the date it receives the information.

(2) The agency must also promptly notify the Inspector General of any action it takes on the provider's application for participation in the program.

(c) *Denial or termination of provider participation.* (1) The Medicaid agency may refuse to enter into or renew an agreement with a provider if any person who has ownership or control interest in the provider, or who is an agent or managing employee of the provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the title XX Services program.

(2) The Medicaid agency may refuse to enter into, or terminate, a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.

§ 1002.100 State plan requirement.

The plan must provide that the requirements of this subpart are met. However, the provisions of these regulations are minimum requirements. The agency may impose broader sanctions if it has the authority to do so under State law.

Subpart B—Mandatory Exclusion

§ 1002.203 Mandatory exclusion.

(a) The State agency, in order to receive FFP, must provide that it will exclude from participation any health maintenance organization (HMO), or entity furnishing services under a waiver approved under section 1915(b)(1) of the Act, if such organization or entity—

(1) Could be excluded under § 1001.1001 of this chapter, or

(2) Has, directly or indirectly, a substantial contractual relationship with an individual or entity that could be excluded under § 1001.1001 of this chapter.

(b) As used in this section, the term—

Exclude includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

Substantial contractual relationship is one in which the sanctioned individual described in § 1001.1001 of this chapter has direct or indirect business transactions with the organization or entity that, in any fiscal year, amount to more than $25,000 or 5 percent of the organization's or entity's total operating expenses, whichever is less. Business transactions include, but are not limited to, contracts, agreements, purchase orders, or leases to obtain services, supplies, equipment, space or salaried employment.

Subpart C—Permissive Exclusions

§ 1002.210 Permissive exclusions; general authority.

The State agency must have administrative procedures in place that enable it to exclude an individual or entity for any reason for which the Secretary could exclude such individual or entity under parts 489, 1001 or 1003 of this title. The period of such exclusion is at the discretion of the State agency.

§ 1002.211 Effect of exclusion.

(a) *Denial of payment.* Except as provided for in § 1001.1901 (e) and (f) of this chapter, no payment may be made by the State agency for any item or service furnished on or after the effective date specified in the notice by an excluded individual or entity, or at the medical direction or on the prescription of a physician who is excluded when a person furnishing such item or service knew, or had reason to know, of the exclusion.

(b) *Denial of FFP.* FFP is not available where the State agency is required to deny payment under paragraph (a) of this section. FFP will be reinstated at such time as the excluded individual or entity is reinstated in the Medicaid program.

§ 1002.212 State agency notifications.

When the State agency initiates an exclusion under § 1002.210, it must provide to the individual or entity subject to the exclusion notification consistent with that required in Subpart E of Part 1001 of this chapter, and must notify other State agencies, the public, beneficiaries, and others as provided in §§ 1001.2005 and 1001.2006 of this chapter.

§ 1002.213 Appeal of exclusions.

Before imposing an exclusion under § 1002.210, the State agency must give the individual or entity the opportunity to submit documents and written argument against the exclusion. The individual or entity must also be given any additional appeals rights that would otherwise be available under procedures established by the State.

§ 1002.214 Basis for reinstatement after State agency-initiated exclusion.

(a) The provisions of this section and § 1002.215 apply to the reinstatement in the Medicaid program of all individuals or entities excluded in accordance with § 1002.210, if a State affords reinstatement opportunity to those excluded parties.

(b) An individual or entity who has been excluded from Medicaid may be reinstated only by the Medicaid agency that imposed the exclusion.

(c) An individual or entity may submit to the State agency a request for reinstatement at any time after the date specified in the notice of exclusion.

§ 1002.215 Action on request for reinstatement.

(a) The State agency may grant reinstatement only if it is reasonably certain that the types of actions that formed the basis for the original exclusion have not recurred and will not recur. In making this determination, the agency will consider, in addition to any factors set forth in State law—

(1) The conduct of the individual or entity occurring prior to the date of the notice of exclusion, if not know to the agency at the time of the exclusion;

(2) The conduct of the individual or entity after the date of the notice of exclusion; and

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare or any of the State Health programs, have been paid, or satisfactory arrangements have been made, the fulfill these obligations.

(b) *Notice of action on request for reinstatement.* (1) If the State agency approves the request for reinstatement, it must give written notice to the excluded party, and to all others who were informed of the exclusion in accordance with § 1002.212, specifying the date on which Medicaid program participation may resume.

(2) If the State agency does not approve the request for reinstatement, it will notify the excluded party of its decision. Any appeal of a denial of reinstatement will be in accordance with State procedures and need not be subject to administrative or judicial review, unless required by State law.

Subpart D—Notification to OIG of State or Local Convictions of Crimes Against Medicaid

§ 1002.230 Notification of State or local convictions of crimes against Medicaid.

(a) The State agency must notify the OIG whenever a State or local court has convicted an individual who is receiving reimbursement under Medicaid of a criminal offense related to participation in the delivery of health care items or services under the Medicaid program.

(b) If the State agency was involved in the investigation or prosecution of the case, it must send notice within 15 days after the conviction.

(c) If the State agency was not so involved, it must give notice within 15 days after it learns of the conviction.

PART 1003—[AMENDED]

D. Part 1003 would be amended to read as follows:

1. The heading of part 1003 would be revised to read as follows:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

2. The authority citation for part 1003 would continue to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395u(j) and 1395u(k)).

3. Section 1003.100 would be revised to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128, 1128A, 1842(j) and 1842(k) of the Social Security Act (42 U.S.C. 1320a–7, 1320a–7a, 1395u(j) and 1395u(k)).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and assessments against persons who—

(i) Have submitted certain prohibited claims under the Medicare, Medicaid, or the Maternal and Child Health Services or Social Services Block Grant programs;

(ii) Seek payment in violation of the terms of an assignment agreement or a limitation on charges or payments under the Medicare program, or a requirement not to charge in excess of the amount permitted under the Medicaid program; or

(iii) Give false or misleading information that might affect the decision to discharge a Medicare patient from the hospital;

(2) Provides for the exclusion of persons from the Medicare or State health care programs against whom a civil money penalty or assessment has been imposed, and the basis for reinstatement of persons who have been excluded; and

(3) Sets forth the appeal rights of persons subject to a penalty, assessment and exclusion.

4. Section 1003.101 would be amended by removing the definitions *Agent* and *Suspension*; by revising the definitions *Claim*, *Program* and *Request for payment*; and by adding definitions *Exclusion*, *Furnished*, *Social Services Block Grant program* and *State health care program* to read as follows:

§ 1003.101 Definitions.

* * * * *

Claim means an application for payment for an item or service for which payment may be made under the Medicare, Medicaid, Maternal and Child Health Services Block Grant, or Social Services Block Grant programs.

* * * * *

Exclusion means the temporary or permanent barring of a person from participation in the Medicare program or in a State health care program, and that items or services furnished or ordered by such person are not reimbursed under such programs.

Furnished refers to items or services provided directly by, under the direct supervision of, or ordered by a person (either as an employee or in his or her own capacity).

* * * * *

Program means the Medicare, Medicaid, Maternal and Child Health Services Block Grant, and Social Services Block Grant programs.

Request for payment means an application submitted by a person to any person for payment for an item or service.

* * * * *

Social Services Block Grant program means the program authorized under title XX of the Social Security Act.

* * * * *

State health care program means a State plan approved under title XIX of the Act, any program receiving funds under title V of the Act or from an allotment to a State under such title, or any program receiving funds under title XX of the Act or from an allotment to a State under such title.

* * * * *

5. Section 1003.102 would be amended by revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(ii), (b)(1)(iv), (b)(4), (c)(2), and (c)(3) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

(a) The OIG may impose a penalty and assessment against any person whom it determines in accordance with this part has presented, or caused to be presented, a claim which is for—

(1) An item or service that the person knew, or should have known, was not provided as claimed;

(2) An item or service for which the person knew, or should have known, that the claim was false or fraudulent;

(3) An item or service furnished during a period in which the person was excluded from participation in the program to which the claim was made in accordance with a determination made under sections 1128 (42 U.S.C. 1320a–7), 1128A (42 U.S.C. 1320a–7a), 1156 (42 U.S.C. 1320c–5), 1160(b) as in effect on September 2, 1982 (42 U.S.C. 1320c–9(b)), 1842(j)(2) (42 U.S.C. 1395u(j), 1862(d) as in effect on August 18, 1987 (42 U.S.C. 1395y(d)), or 1866(b) (42 U.S.C. 1395cc(b)); or

(4) For a physicians' service (or an item or service incident to a physician's service) for which the person knew, or should have known, that the individual who furnished (or supervised the furnishing of) the service—

(i) Was not licensed as a physician;

(ii) Was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing); or

(iii) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty board when he or she was not so certified.

(b) The OIG may impose a penalty against any person whom it determines in accordance with this part—

(1) Has presented or caused to be presented a request for payment in violation of the terms of—

* * * * *

(ii) An agreement with a State agency or other requirement of a State Medicaid plan not to charge a person for an item or service in excess of the amount permitted to be charged;

* * * * *

(iv) An agreement in accordance with section 1866(a)(1)(G) of the Act not to charge any person for inpatient hospital services for which payment had been denied or reduced under section 1886(f)(2) of the Act.

* * * * *

(4) Has given to any person, in the case of inpatient hospital services subject to the provisions of section 1886 of the Act, information that he or she knew, or should have known, was false or misleading and that could reasonably have been expected to influence the decision when to discharge such person or another person from the hospital.

(c) * * *

(2) In any case in which it is determined that more than one person was responsible for presenting, or causing to be presented, a request for payment or for giving false or misleading information as described in paragraph (b) of this section, each such person may be held liable for the penalty prescribed by this part.

(3) Under this section, a principal is liable for penalties and assessments for the actions of his or her agent acting within the scope of the agency.

6. Section 1001.103 would be revised to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraph (b) of this section, the OIG may impose a penalty of not more than $2,000 for each item or service that is subject to a determination of under § 1003.102.

(b) The OIG may impose a penalty of not more than $15,000 for each person with respect to whom a determination was made that false or misleading information was given under § 1003.102(b)(4).

7. Section 1003.105 would be revised to read as follows:

§ 1003.105 Exclusion from participation in Medicare or a State health care program.

(a) A person subject to a penalty or assessment determined under § 1003.102 may, in addition, be excluded from participation in Medicare for a period of time determined under § 1003.107. The OIG will also direct each appropriate State agency to exclude the person from each State health care program for the same period of time. The OIG may waive an exclusion from a State health care program upon request of the State agency in accordance with the following provisions—

(1) The OIG will consider an application from a State agency for a waiver if the person is:

(i) The sole community physician, or

(ii) The sole source of essential specialized services in a community.

(2) If a waiver is granted, it is applicable only to the State health care program for which the State agency requested the waiver.

(3) If the State agency subsequently submits evidence that the basis for the waiver no longer exists, the waiver will cease and the person will be excluded from the State health care program for the remainder of the period that such person is excluded from Medicare.

(4) The OIG will notify the State agency whether its request for a waiver has been granted or denied.

(5) The decision to deny a waiver is not subject to administrative or judicial review.

(b) Any exclusion under this section will become effective only after there is a final decision of the Secretary in accordance with §§ 1005.20 or 1005.21 of this chapter, or at any earlier date that the respondent fails, within the time permitted, to exercise his or her right to a hearing under § 1003.109 or administrative review under § 1005.21. The effect of such exclusion will be governed by part 1001 of this chapter.

(c) When the Inspector General proposes to exclude a long-term care facility from the Medicare and Medicaid programs, he or she will at the same time he or she notifies the respondent, notify the appropriate State Office of Aging, the long-term care ombudsman, and the State Medicaid agency of the Inspector General's intention to exclude the facility.

8. Section 1003.106 would be amended by revising paragraphs (a), (b) and (c) introductory text to read as follows:

§ 1003.106 Determinations regarding the amount of the penalty and assessment.

(a) In determining the amount of any penalty or assessment, the Department will take into account, in accordance with this section—

(1) The nature of the claim, request for payment or information given, and the circumstances under which it was presented or given;

(2) The degree of culpability of the person submitting the claim or request for payment, or giving the information;

(3) The history of prior offenses of the person submitting the claim or request for payment, or giving the information;

(4) The financial condition of the person presenting the claim or request for payment, or giving the information; and

(5) Such other matters as justice may require.

(b) *Guidelines for determining the amount of the penalty or assessment.* As guidelines for taking into account the factors listed in paragraph (a) of this section, the following circumstances are to be considered—

(1) *Nature and circumstances of the incident.* It should be considered a mitigating circumstance if all the items or services or incidents subject to a determination under § 1003.102 included in the action brought under this part were of the same type and occurred within a short period of time, there were few such items or services or incidents, and the total amount claimed or requested for such items or services was less than $1,000. It should be considered an aggravating circumstance if—

(i) Such items or services or incidents were of several types, occurred over a lengthy period of time;

(ii) There were many such items or services or incidents (or the nature and circumstances indicate a pattern of claims or requests for payment for such items or services or a pattern of incidents);

(iii) The amount claimed or requested for such items or services was substantial; or

(iv) The false or misleading information given resulted in harm to the patient, a premature discharge or a need for additional services or subsequent hospital admission.

(2) *Degree of culpability.* It should be considered a mitigating circumstance if the claim or request for payment for the item or service was the result of an unintentional and unrecognized error in the process respondent followed in presenting claims or requesting payment, and corrective steps were taken promptly after the error was discovered. It should be considered an aggravating circumstance if—

(i) The respondent knew the item or service was not provided as claimed or if the respondent knew that the claim was false or fraudulent;

(ii) The respondent knew that the items or services were furnished during a period that he or she had been excluded from participation and that no payment could be made as specified in § 1003.102(a)(3) or because payment would violate the terms of an assignment or an agreement with a State agency or other agreement or limitation on payment under § 1003.102(b); or

(iii) The respondent knew that the information could reasonably be expected to influence the decision of when to discharge a patient from a hospital.

(3) *Prior offenses.* It should be considered an aggravating circumstance if at any time prior to the incident or presentation of any claim or request for payment which included an item or service subject to a determination under § 1003.102, the respondent was held liable for criminal, civil or administrative sanctions in connection with a program covered by this part or any other public or private program of reimbursement for medical services.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed, for every item or service or incident subject to a determination under § 1003.102:

* * * * *

9. Section 1003.107 would be revised to read as follows:

§ 1003.107 Determinations regarding exclusion.

(a) In determining whether to exclude a person and the duration of an exclusion, the Department will take into account the circumstances set forth in § 1003.106(a) and described in § 1003.106(b). Where there are aggravating circumstances as described in § 1003.106(b), the person should be excluded. In the case of an exclusion based on a determination under § 1003.102(b) (2) or (3), the length of the exclusion may not exceed 5 years.

(b) The guidelines set forth in this section are not binding. Moreover, nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126 or to compromise any exclusion as provided by § 1003.128.

10. Section 1003.109 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes to impose a penalty and assessment, or to exclude a respondent from participation in Medicare or a State health care program in accordance with this part, he or she must serve notice of the action by any manner authorized by Rule 4 of the Federal Rules of Civil Procedure. The notice will include—

(1) Reference to the statutory basis for the penalty, assessment and exclusion;

(2) A description of the claims, requests for payment, or incidents with respect to which the penalty, assessment and exclusion are proposed (except in cases where the Inspector General is relying upon statistical sampling in accordance with § 1003.133 in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and will also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) The reason why such claims, requests for payment or incidents subject the respondent to a penalty, assessment and exclusion; the amount of the proposed penalty, assessment and the period of proposed exclusion (where applicable);

(4) Any circumstances described in § 1003.106 which were considered when determining the amount of the proposed penalty and assessment and the period of exclusion;

(5) Instructions for responding to the notice, including a specific statement of respondent's right to a hearing, of the fact that failure to request a hearing within 60 days permits the imposition of the proposed penalty, assessment and exclusion without right of appeal; and

(6) In the case of a notice sent to a respondent who has an agreement under section 1866 of the Act, the notice will also indicate that the imposition of an exclusion may result in the termination of the provider's agreement in accordance with section 1866(b)(2)(C) of the Act.

(b) Any person upon whom the Inspector General has proposed the imposition of a penalty, assessment or exclusion may appeal such proposed penalty, assessment or exclusion in accordance with part 1005 of this chapter.

* * * * *

11. Section 1003.110 would be amended by substituting the word "exclusion" in place of the word "suspension" every time it appears; and by revising the citation in the first sentence to read as "§ 1003.109(a)".

12. Sections 1003.111 through 1003.113 would be removed.

13. Section 1003.114 would be revised to read as follows:

§ 1003.114 Collateral estoppel.

(a) Where a final determination that the respondent presented or caused to be presented a claim or request for payment falling within the scope of § 1003.102 has been rendered in any proceeding in which the respondent was a party and had an opportunity to be heard, the respondent shall be bound by such determination in any proceeding under this part.

(b) In a proceeding under this part that—

(1) Is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(2) Involves the same transactions as in the criminal action, the person is estopped from denying the essential elements of the criminal offense.

§§ 1003.115, 1003—1003.125 [Removed]

14. Sections 1003.115 through 1003.125 would be removed.

15. Section 1003.127 would be revised to read as follows:

§ 1003.127 Judicial review.

Section 1128A(e) of the Act authorizes judicial review of a penalty, assessment or exclusion that has become final. Judicial review may be sought by a respondent only with respect to a penalty, assessment or exclusion with respect to which the respondent filed an exception under § 1005.21(c) of this chapter unless the failure or neglect to urge such exception will be excused by the court in accordance with section 1128A(e) because of extraordinary circumstances.

16. Section 1003.128 would be amended by revising paragraphs (a) and (d) to read as follows:

§ 1003.128 Collection of penalty and assessment.

(a) Once a determination by the Secretary has become final, collection of any penalty and assessment will be the responsibility of HCFA, except in the case of the Maternal and Child Health Services Block Grant program, where the collection will be the responsibility of the Public Health Service, and in the case of the Social Services Block Grant program, where the collection will be the responsibility of the Office of Human Development Services.

* * * * *

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under section 1128A(e) of the Act may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

17. Section 1003.129 would be revised to read as follows:

§ 1003.129 Notice to other agencies.

Whenever a penalty, assessment or exclusion become final, the following organizations and entities will be notified about such action and the reasons for it—the appropriate State or local medical or professional association; the appropriate Peer Review Organization; as appropriate,

the State agency responsible or the administration of each State health care program; the appropriate Medicare carrier or intermediary; the appropriate State or local licensing agency or organization (including the Medicare and Medicaid State survey agencies); and the long-term care ombudsman. In cases involving exclusions, notice will also be given to the public of the exclusion and its effective date.

§§ 1003.130 and 1003.131 [Removed]

18. Sections 1003.130 and 1003.131 would be removed.

19. Section 1003.132 would be revised to read as follows:

§ 1003.132 Limitations.

No action under this part will be entertained unless commenced, in accordance with § 1003.109(a) of this part, within 6 years from the date on which the claim was presented, the request for payment was made, or the incident occurred.

§ 1003.133 [Amended]

20. Section 1003.113 would be amended by revising the citation in the introductory clause of the first sentence of paragraph (a) from "§ 1003.114" to "§ 1005.15 of this chapter".

21. New §§ 1003.134 and 1003.135 would be added to read as follows:

§ 1003.134 Reinstatement.

A person who has been excluded in accordance with this part may apply for reinstatement at the end of the period of exclusion. The OIG will consider any request for reinstatement in accordance with the provisions of §§ 1001.3001 through 1001.3004 of this chapter.

§ 1003.135 Effect of exclusion.

The effect of an exclusion will be as set forth in § 1001.2005 of this chapter.

PART 1004—IMPOSITION OF SANCTIONS ON HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES BY A PEER REVIEW ORGANIZATION

E. Part 1004 would be amended to read as follows:

1. The authority citation for part 1004 would continue to read as follows:

Authority: Secs. 1102 and 1156 of the Social Security Act (42 U.S.C. 1302 and 1320c–5).

§ 1004.100 [Amended]

2. Section 1004.100 would be amended by removing paragraph (g).

3. Section 1004.130 would be revised to read as follows:

§ 1004.130 Appeal rights.

(a) *Right to administrative review.* (1) A practitioner or other person dissatisfied with an OIG determination, or an exclusion that results from a determination not being made within 120 days, is entitled to appeal such sanction in accordance with part 1005 of this chapter.

(2) Due to the 120-day statutory requirement specified in § 1004.90(e), the following limitations apply—

(i) The period for submitting additional information will not be extended.

(ii) Any material received by the OIG after the 30-day period allowed, will not be considered by the OIG.

(3) The OIG's determination continues in effect unless reversed by a hearing.

(b) *Right to judicial review.* Any practitioner or other person dissatisfied with a final decision of the Secretary may file a civil action in accordance with the provisions of section 205(g) of the Act.

F. A new part 1005 would be added to read as follows:

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

Sec.

1005.1 Definitions.
1005.2 Hearing before an administrative law judge.
1005.3 Rights of parties.
1005.4 Authority of the ALJ.
1005.5 Ex parte contacts.
1005.6 Prehearing conferences.
1005.7 Discovery.
1005.8 Exchange of witness lists, witness statements and exhibits.
1005.9 Subpoenas for attendance at hearing.
1005.10 Fees.
1005.11 Form, filing and service of papers.
1005.12 Computation of time.
1005.13 Motions.
1005.14 Sanctions.
1005.15 The hearing and burden of proof.
1005.16 Witnesses.
1005.17 Evidence.
1005.18 The record.
1005.19 Post-hearing briefs.
1005.20 Initial decision.
1005.21 Appeal to Secretary or delegate.
1005.22 Stay of initial decision.
1005.23 Harmless error.

Authority: Secs. 205(a), 205(b), 1102, 1128, 1128A and 1156 of the Social Security Act (42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5).

§ 1005.1 Definitions.

Exclusion cases refer to all proceedings arising under parts 1001 and 1004 of this chapter.

Civil money penalty cases refer to all proceedings arising under part 1003 of this title.

§ 1005.2 Hearing before an administrative law judge.

(a) A party sanctioned under any criteria specified in parts 1001, 1003 and 1004 of this chapter may request a hearing before an administrative law judge (ALJ).

(b) In exclusion cases, the parties to the hearing proceeding will consist of the petitioner and the IG. In civil money penalty cases, the parties to the hearing proceeding will consist of the respondent and the IG.

(c) The request for a hearing will be made in writing, signed by the petitioner or respondent or by his or her attorney. The request must be filed within 60 days after the notice letter is received by the petitioner or respondent. For purposes of this section, the date of receipt of the notice letter will be presumed to be 5 days after the date of such notice unless there is a reasonable showing to the contrary.

(d) The request for a hearing will contain a statement as to the specific issues or findings of fact and conclusions of law in the notice letter with which the petitioner or respondent disagrees, and the basis for his or her contention that the specific issues or findings and conclusions were incorrect.

(e) The ALJ will dismiss a hearing request where—

(1) The petitioner's or the respondent's hearing request is not filed in a timely manner;

(2) The petitioner or respondent withdraws his or her request for a hearing; or

(3) The petitioner or respondent abandons his or her request for a hearing.

§ 1005.3 Rights of parties.

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

(1) Be accompanied, represented and advised by an attorney;

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

(3) Conduct discovery of documents as permitted by this Part;

(4) Agree to stipulations of fact or law which will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

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

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

(b) Fees for any services performed on behalf of a party by an attorney are not subject to the provisions of section 206 of title II of the Act, which authorizes

the Secretary to specify or limit these fees.

§ 1005.4 Authority of the ALJ.

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

(b) The ALJ has the authority to—

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

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

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

(4) Administer oaths and affirmations;

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

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of documentary discovery as permitted by this part;

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

(9) Examine witnesses;

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

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

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

(13) Conduct any conference, argument or hearing in person or, upon agreement of the parties, by telephone.

(c) The ALJ does not have the authority to—

(1) Find Federal statutes or regulations invalid, or to enjoin any act of the Secretary;

(2) Enter an order in the nature of a directed verdict; or

(3) Compel settlement negotiations.

§ 1005.5 Ex parte contacts.

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

§ 1005.6 Prehearing conferences.

(a) The ALJ will schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

(1) Simplification of the issues;

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

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

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

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

(6) Limitation of the number of witnesses;

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

(8) Discovery of documents as permitted by this Part;

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

(10) Such other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings.

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

§ 1005.7 Discovery.

(a) A party may make a request to another party for production of documents for inspection and copying which are relevant and material to the issues before the ALJ.

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

(c) Except as permitted by this part, requests for documents, requests for admissions, written interrogatories, depositions and any other forms of discovery are not authorized.

(d)(1) Within 10 days of service of a request for production of documents, a party may file a motion for a protective order.

(2) The ALJ may grant a motion for a protective order if he or she finds that the discovery sought:

(i) Is unduly costly or burdensome,

(ii) Will unduly delay the proceeding, or

(iii) Seeks privileged information.

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

§ 1005.8 Exchange of witness lists, witness statements and exhibits.

(a) At least 15 days before the hearing, or at such other time as may be ordered by the ALJ, the parties will exchange witness lists, copies of prior written statements of proposed witnesses and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 1005.16.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as specified in paragraph (a) of this section unless the ALJ finds good cause for the failure, or that there is no substantial prejudice to the objecting party. The ALJ may recess the hearing for such time to allow the objecting party the opportunity to prepare and respond to such witness or exhibit.

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

§ 1005.9 Subpoena for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may make a motion requesting the ALJ to issue a subpoena if the appearance and testimony are reasonably necessary for the presentation of a party's case.

(b) A subpoena requiring the attendance of an individual may also require the individual to produce evidence at the hearing in accordance with § 1005.7.

(c) A party seeking a subpoena will file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. Such request will:

(1) Specify any evidence to be produced,

(2) Designate the witnesses, and

(3) Describe the address and location with sufficient particularity to permit such witness to be found.

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

(e) Within 15 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(f) If the motion requesting issuance of a subpoena is granted, the party seeking

the subpoena will serve it by delivery to the individual named, or by certified mail addressed to such individual at his or her last dwelling place or principal place of business.

(g) The individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.

(h) The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in section 205(e) of the Social Security Act (42 U.S.C. 405(e)).

§ 1005.10 Fees.

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

§ 1005.11 Form, filing and service of papers.

(a) *Forms.* (1) Unless the ALJ directs the parties to do otherwise, documents filed with the ALJ will include an original and two copies.

(2) Every pleading and paper filed in the proceeding will contain a caption setting forth the title of the action, the case number, and a designation of the paper, such as motion to quash subpoena.

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

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

(b) *Service.* A party filing a document with the ALJ or the Secretary will, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document will be made by delivering a copy, or placing a copy of the document will be made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service will be made upon such attorney in lieu of the party.

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

§ 1005.12 Computation of time.

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

(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays observed by the Federal Government will be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional 5 days will be added to the time permitted for any response. This paragraph does not apply to requests for hearing under § 1005.2.

§ 1005.13 Motions.

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

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

(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

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

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

§ 1005.14 Sanctions.

(a) The ALJ may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action or for other misconduct that interferes with the speedy, orderly or fair conduct of the hearing. Such sanctions will reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(1) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(2) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(3) Striking pleadings, in whole or in part;

(4) Staying the proceedings;

(5) Dismissal of the action;

(6) Entering a decision by default; and

(7) Refusing to consider any motion or other action that is not filed in a time manner.

(b) In civil money penalty cases commenced under section 1128A of the Act or under any provision which incorporates section 1128A(c)(4) of the Act, the ALJ may also order the party or attorney who has engaged in any of the acts described in paragraph (a) of this section to pay attorney's fees and other costs caused by the failure or misconduct.

§ 1005.15 The hearing and burden of proof.

(a) The ALJ will conduct a hearing on the record in order to determine whether the petitioner or respondent should be found liable under this part.

(b) *Burden of proof in exclusion cases.* In exclusion cases—

(1) The petitioner bears the burden of going forward with respect to affirmative defenses and any mitigating circumstances;

(2) The IG bears the burden of going forward with respect to all other issues; and

(3) The petitioner bears the burden of persuasion with respect to all issues.

(c) *Burden of proof in civil money penalty cases.* In civil money penalty cases—

(1) The respondent bears the burden of going forward and the burden of persuasion with respect to affirmative defenses and any mitigating circumstances; and

(2) The IG bears the burden of going forward and the burden of persuasion with respect to all other issues.

(d) The burden of persuasion will be judged by a preponderance of the evidence.

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

(f) A hearing under this part is a de novo hearing with respect to those violations of law specified in the notice letter, and is not limited to specific items and information set forth in the notice letter to the petitioner or respondent. Additional items or information may be introduced at the hearing, if deemed otherwise admissible by the ALJ.

§ 1005.16 Witnesses.

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

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statement of witnesses proposed to testify at the hearing will be exchanged as provided in § 1005.8.

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

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

(2) Avoid repetition or needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

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

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This does not authorize exclusion of—

(1) A party who is an individual;

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

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

§ 1005.17 Evidence.

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

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

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

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

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

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

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

(h) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless otherwise ordered by the ALJ for good cause shown.

§ 1005.18 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication. No transcription or duplication fee will be charged to the IG.

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

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order any part of the record sealed, or appropriate redactions made to the record.

§ 1005.19 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ will fix the time for filing such briefs which are not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 1005.20 Initial decision.

(a) The ALJ will issue an initial decision, based only on the record, which will contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase or reduce the penalties, assessment or exclusion proposed or imposed by the IG, or vacate the imposition of the exclusion. In exclusion cases where the period of exclusion commenced prior to the hearing, any period of exclusion imposed by the ALJ will be deemed to commence on the date such exclusion originally went into effect.

(c) The ALJ will promptly serve the initial decision on all parties within 60 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. The decision will be accompanied by a statement describing the right of any party to file a notice of appeal with the Secretary and instructions for how to file such appeal. If the ALJ fails to meet the deadline contained in this paragraph, he or she will notify the parties of the reason for the delay and will set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Secretary, the initial decision will be final and binding on the parties 60 days after it is issued by the ALJ.

§ 1005.21 Appeal to Secretary or delegate.

(a) Any party may appeal the initial decision of the ALJ to the Secretary, or his or her delegate, by filing a notice of appeal with the Secretary within 30 days of the date of issuance of the initial decision. The Secretary may extend the initial 30 day period for an additional 15 days if a party files with Secretary a request for an extension within the initial 30 day period and shows good cause.

(b) If a party files a timely notice of appeal with the Secretary, the ALJ will forward the record of the proceeding to the Secretary.

(c) A notice of appeal will be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions. Any party may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief. The Secretary may permit the parties to file reply briefs.

(d) There is no right to appear personally before the Secretary, or to appeal to the Secretary any interlocutory ruling by the ALJ.

(e) The Secretary will not consider any exception not based on an objection that was raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(f) If any party demonstrates to the satisfacton of the Secretary that additional evidence not presented at such hearing is relevant and material and that there were extraordinary circumstances that account for the failure to present such evidence at such hearing, the Secretary may remand the matter to the ALJ for consideration of such additional evidence.

(g) The Secretary may decline to review the case, or may affirm, increase, reduce, reverse or remand any penalty,

assessment or exclusion determined by the ALJ.

(h) The standard of review on a disputed issue of fact is whether the initial decision is supported by substantial evidence on the whole record. The standard of review on a disputed issue of law is whether the initial decision is erroneous.

(i) The Secretary will promptly serve each party to the appeal with a copy of the decision of the Secretary and a statement describing the right of any petitioner or respondent who is found liable to seek judicial review within 60 days after the time for submission of briefs and reply briefs, if permitted, has expired.

(j) After a petitioner or respondent has exhausted all administrative remedies under this part and unless a petition for judicial review is filed as provided by statute, after 60 days following the date on which the Secretary serves the petitioner with a copy of the Secretary's decision, a determination that a petitioner or respondent is found liable is final and is not subject to judicial review.

§ 1005.22 Stay of initial decision.

(a) In civil money penalty cases, the filing of a respondent's request for review by the Secretary will automatically stay the effective date of the initial decision. After the Secretary renders a decision, the respondent may file with the ALJ a request for stay of the effective date of the final administrative decision pending appeal to the courts, as permitted by statute. Such a request will state the grounds upon which respondent relies in requesting the stay, together with a copy of the notice(s) of appeal filed by respondent seeking review of the final administrative decision. The filing of such a request will automatically act to stay the effective date of the final administrative decision until such time as the ALJ rules upon the request.

(b) The IG may file an opposition to respondent's request for a stay within 10 days of receipt of the request. If the IG fails to file such an opposition within the allotted time, or indicates that he or she has no objection to the request, the ALJ will grant the stay without requiring respondent to give a bond or other security.

(c) In those cases in which the IG opposes respondent's request for a stay, the ALJ may grant respondent's request where justice so requires and to the extent necessary to prevent irreparable harm. An ALJ may grant an opposed request to stay a final decision requiring the payment of money only upon the respondent's giving of a bond or other adequate security. The ALJ will rule upon an opposed request for stay within 10 days of the receipt of the opposition of the IG. A decision of the ALJ denying respondent's request for a stay will constitute final agency action.

§ 1005.23 Harmless error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in any act done or omitted by the ALJ or by any of the parties, including Federal representatives such as Medicare carriers and intermediaries and Peer Review Organizations, is ground for vacating, modifying or otherwise disturbing an otherwise appropriate ruling or order or act, unless refusal to take such action appears to the ALJ or the Secretary inconsistent with substantial justice. The ALJ and the Secretary at every stage of the proceeding will disregard any error or defect in the proceeding that does not affect the substantial rights of the parties.

G. A new part 1006 would be added to read as follows:

PART 1006—INVESTIGATIONAL INQUIRIES

Sec.
1006.1 Scope.
1006.2 Contents of subpoena.
1006.3 Service and fees.
1006.4 Procedures for investigational inquiries.
1006.5 Enforcement of a subpoena.

Authority: Secs. 205(d), 205(e), 1102 and 1128A of the Social Security Act (42 U.S.C. 405(d), 405(e), 1302 and 1320a–7a).

§ 1006.1 Scope.

(a) The provisions in this Part govern subpoenas issued by the Inspector General, or his or her delegates, in accordance with sections 205(d) and 1128A(j) of the Act, and require the attendance and testimony of witnesses and the production of any other evidence at an investigational inquiry.

(b) Such subpoenas may be issued in investigations under section 1128A of the Act or under any other section of the Act that incorporates the provisions of section 1128A(j).

(c) Nothing in this Part is intended to apply to or limit the authority of the Inspector General, or his or her delegates, to issue subpoenas for the production of documents in accordance with 5 U.S.C. App. 3 section 6(a)(4).

§ 1006.2 Contents of subpoena.

A subpoena issued under this part will—

(a) State the name of the individual or entity to whom the subpoena is addressed;

(b) State the statutory authority for the subpoena;

(c) Indicate the date, time and place that the investigational inquiry at which the witness is to testify will take place;

(d) Include a reasonably specific description of any documents or items required to be produced; and

(e) If the subpoena is addressed to an entity, describe with reasonable particularity the subject matter on which testimony is required. In such event, the named entity will designate one or more individuals who will testify on its behalf, and will state as to each individual so designated that individual's name and address and the matters on which he or she will testify. The individual so designated will testify as to matters known or reasonably available to the entity.

§ 1006.3 Service and fees.

(a) A subpoena under this part will be served by—

(1) Delivering a copy to the individual named in the subpoena;

(2) Delivering a copy to the entity named in the subpoena at its last principal place of business; or

(3) Registered or certified mail addressed to such individual or entity at its last known dwelling place or principal place of business.

(b) A verified return by the individual serving the subpoena setting forth the manner of service or, in the case of service by registered or certified mail, the signing return post office receipt, will be proof of service.

(c) Witnesses will be entitled to the same fees and mileage as witnesses in the district courts of the United States (28 U.S.C. 1821 and 1825). Such fees need not be paid at the time the subpoena is served.

§ 1006.4 Procedures for investigational inquiries.

(a) Testimony at investigational inquiries will be taken under oath or affirmation.

(b) Investigational inquiries are non-public investigatory proceedings. Attendance of non-witnesses is within the discretion of the OIG, except that—

(1) A witness is entitled to be accompanied, represented and advised by an attorney; and

(2) Representatives of the OIG and the Office of the General Counsel are entitled to attend and ask questions.

(c) A witness will have an opportunity to clarify his or her answers on the record following the questions by the OIG.

(d) Any claim of privilege must be asserted by the witness on the record.

(e) Objections must be asserted on the record. Errors of any kind that might be corrected if promptly presented will be deemed to be waived unless reasonable objection is made at the investigational inquiry. Except where the objection is on the grounds of privilege, the question will be answered on the record, subject to the objection.

(f) If a witness refuses to answer any question not privileged or to produce requested documents or items, or engages in conduct likely to delay or obstruct the investigational inquiry, the OIG may seek enforcement of the subpoena under § 1006.5.

(g)(1) The proceedings will be recorded and transcribed.

(2) The witness is entitled to a copy of the transcript, upon payment of prescribed costs, except that, for good cause, the witness may be limited to inspection of the official transcript of his or her testimony.

(3)(i) The transcript will be submitted to the witness for signature.

(ii) Where the witness will be provided a copy of the transcript, the transcript will be submitted to the witness for signature. The witness may submit to the OIG written proposed corrections to the transcript, with such corrections attached to the transcript. If the witness does not return a signed copy of the transcript or proposed corrections within 30 days of its being submitted to him or her for signature, the witness will be deemed to have agreed that the transcript is true and accurate.

(iii) Where, as provided in paragraph (g)(2) of this section, the witness is limited to inspecting the transcript, the witness will have the opportunity at the time of inspection to propose corrections to the transcript, with corrections attached to the transcript. The witness will also have the opportunity to sign the transcript. If the witness does not sign the transcript or offer corrections within 30 days or receipt of notice of the opportunity to inspect the transcript, the witness will be deemed to have ageed that the transcript is true and accurate.

(iv) The OIG's proposed revisions to the transcript will be attached to the transcript.

(h) Testimony and other evidence obtained in an investigational inquiry may be used by the OIG or DHHS in any of its activities, and may be used or offered into evidence in any administrative or judicial proceeding.

§ 1006.5 Enforcement of a subpoena.

A subpoena to appear at an investigational inquiry is enforceable through the District Court of the United States and the district where the subpoenaed person is found, resides or transacts business.

H. A new part 1007 would be added to read as follows:

PART 1007—STATE MEDICAID FRAUD CONTROL UNITS

Sec.

1007.1 Definitions.
1007.3 Scope and purpose.
1007.5 Basic requirement.
1007.7 Organization and location requirements.
1007.9 Relationship to, and agreement with, the Medicaid agency.
1007.11 Duties and responsibilities of the unit.
1007.13 Staff requirements.
1007.15 Applications, certification and recertification.
1007.17 Annual report.
1007.19 Federal financial participation (FFP).
1007.21 Other applicable HHS regulations.

Authority: Secs. 1903(a)(6), 1903(b)(3) and 1903(q) of Social Security Act (42 U.S.C. 1396b(a)(6), 1396b(b)(3) and 1396b(q)).

§ 1007.1 Definitions.

As used in this part, unless otherwise indicated by the context:

Employ or employee, as the context requires, means full-time duty intended to last at least a year. It includes an arrangement whereby an individual is on full-time detail or assignment to the unit from another government agency, if the detail or assignment to the unit from another government agency, if the detail or assignment is for a period of at least 1 year and involves supervision by the unit.

Provider means an individual or entity which furnishes items or services for which payment is claimed under Medicaid.

Unit means the State Medicaid fraud control unit.

§ 1007.3 Scope and purpose.

This part implements sections 1903(a)(6), 1903(b)(3), and 1903(q) of the Social Security Act, as amended by the Medicare-Medicaid Anti-fraud and Abuse Amendments (Pub. L. 95–142 of October 25, 1977). The statute authorizes the Secretary to pay a State 90 percent of the costs of establishing and operating a State Medicaid fraud control unit, as defined by the statute, for the purpose of eliminating fraud in the State Medicaid program.

§ 1007.5 Basic requirement.

A State Medicaid fraud control unit must be a single identifiable entity of the State government certified by the Secretary as meeting the requirements of §§ 1007.7 through 1007.13.

§ 1007.7 Organization and location requirements.

Any of the following three alternatives is acceptable:

(a) The unit is located in the office of the State attorney general or another department of State government which has statewide authority to prosecute individuals for violations of criminal laws with respect to fraud in the provision or administration of medical assistance under a State plan implementing Title XIX of the Act; or

(b) If there is no State agency with statewide authority and capability for criminal fraud prosecutions, the unit has established formal procedures which assure that the unit refers suspected cases of criminal fraud in the State Medicaid program to the appropriate State prosecuting authority or authorities, and provides assistance and coordination to such authority or authorities in the prosecution of such cases; or

(c) The unit has a formal working relationship with the office of the State attorney general and has formal procedures for referring to the attorney general suspected criminal violations occurring in the State Medicaid program and for effective coordination of the activities of both entities relating to the detection, investigation and prosecution of those violations. Under this requirement, the office of the State attorney general must agree to assume responsibility for prosecuting alleged criminal violations referred to it by the unit. However, if the attorney general finds that another prosecuting authority has the demonstrated capacity, experience and willingness to prosecute an alleged violation, he or she may refer a case to that prosecuting authority, as long at the Attorney General's Office maintains oversight responsibility for the prosecution and for coordination between the unit and the prosecuting authority.

§ 1007.9 Relationship to, and agreement with, the Medicaid agency.

(a) The unit must be separate and distinct from the Medicaid agency.

(b) No official of the Medicaid agency shall have authority to review the activities of the unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.

(c) The unit shall not receive funds paid under this subpart either from or through the Medicaid agency.

(d) The unit shall enter into an agreement with the Medicaid agency under which the Medicaid agency will

agree to comply with all requirements of § 455.21(a)(2) of this title.

§ 1007.11 Duties and responsibilities of the unit.

(a) The unit shall conduct a statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.

(b) The unit shall also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities.

(1) If the initial review indicates substantial potential for criminal prosecution, the unit shall investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(2) If the initial review does not indicate a substantial potential for criminal prosecution, the unit shall refer the complaints to an appropriate State agency.

(c) If the unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider of medical assistance under the State Medicaid plan, the unit shall either attempt to collect such overpayment or refer the matter to an appropriate State agency for collection.

(d) Where a prosecuting authority other than the unit is to assume responsibility for the prosecution of a case investigated by the unit, the unit shall insure that those responsible for the prosecutive decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecutiing authority throughout all resulting prosecutions.

(e) The unit shall make available to Federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the State plan and shall cooperate with such officials in coordinating any Federal and State investigations or prosecutions involving the same suspects or allegations.

(f) The unit shall safeguard the privacy rights of all individuals and shall provide safeguards to prevent the misuse of information under the unit's control.

§ 1007.13 Staffing requirements.

(a) The unit shall employ sufficient professional, administrative, and support staff to carry out is duties and responsibilities in an effective and efficient manner. The staff must include:

(1) One or more attorneys experienced in the investigation or prosecution of civil fraud or criminal cases, who are capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors;

(2) One or more experienced auditors capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud;

(3) A senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the unit.

(b) The unit shall employ, or have available to it, professional staff who are knowledgeable about the provision of medical assistance under title XIX and about the operation of health care providers.

§ 1007.15 Applications, certification, and recertification.

(a) *Initial application.* In order to receive FFP under this subpart, the unit must submit to the Secretary, an application approved by the Governor, containing the following information and documentation.

(1) A description of the applicant's organization, structure, and location within State government, and an indication of whether it seeks certification under § 1007.7 (a), (b) or (c);

(2) A statement from the State attorney general that the applicant has authority to carry out the functions and responsibilities set forth in this subpart. If the applicant seeks certification under § 1007.7(b), the statement must also specify either that there is no State agency with the authority to exercise statewide prosecuting authority for the violations with which the unit is concerned, or that, although the State attorney general may have common law authority for statewide criminal prosecutions, he or she has not exercised that authority;

(3) A copy of whatever memorandum of agreement, regulation, or other document sets forth the formal procedures required under § 1007.7(b), or the formal working relationship and procedures required under § 1007.7(c);

(4) A copy of the agreement with the Medicaid agency required under § 1007.9;

(5) A statement of the procedures to be followed in carrying out the functions and responsibilities of this subpart;

(6) A projection of the caseload and a proposed budget for the 12-month period for which certification is sought; and

(7) Current and projected staffing, including the names, education, and experience of all senior professional staff already employed and job descriptions, with minimum qualifications, for all professional positions.

(b) *Conditions for, and notification of certification.* (1) The Secretary will approve an application only if he or she has specifically approved the applicant's formal procedures under § 1007.7 (b) or (c) if either of those provisions is applicable, and has specifically certified that the applicant meets the requirements of § 1007.7;

(2) The Secretary will promptly notify the applicant whether the application meets the requirements of this subpart and is approved. If the application is not approved, the applicant may submit an amended application at any time. Approval and certification will be for a period of 1 year.

(c) *Conditions for recertification.* In order to continue receiving payments under this subpart, a unit must submit a reapplication to the Secretary at least 60 days prior to the expiration of the 12-month certification period. A reapplication must:

(1) Advise the Secretary of any changes in the information or documentation required under paragraphs (a) (1) through (5) of this section;

(2) Provide projected caseload and proposed budget for the recertification period; and

(3) Include or incorporate by reference the annual report required under § 1007.17.

(d) *Basis for recertification.* (1) The Secretary will consider the unit's reapplication, the reports required under § 1007.17, and any other reviews or information he or she deems necessary or warranted, and will promptly notify the unit whether he or she has approved the reapplication and recertified the unit.

(2) In reviewing the reapplication, the Secretary will give special attention to whether the unit has used its resources effectively in investigating cases of possible fraud, in preparing cases for prosecution, and in prosecuting cases or cooperating with the prosecuting authorities.

(Approved by the Office of Management and Budget under control number 0990–0162)

§ 1007.17 Annual report.

At least 60 days prior to the expiration of the certification period, the unit shall submit to the Secretary a report covering the last 12 months (the first 9 months of the certification period for the first annual report), and containing the following information:

(a) The number of investigations initiated and the number completed or closed, categorized by type of provider;

(b) The number of cases prosecuted or referred for prosecution; the number of cases finally resolved and their outcomes; and the number of cases investigated but not prosecuted or referred for prosecution because of insufficient evidence;

(c) The number of complaints received regarding abuse and neglect of patients in health care facilities; the number of such complaints investigated by the unit; and the number referred to other identified State agencies;

(d) The number of recovery actions initiated by the unit; the number of recovery actions referred to another agency; the total amount of overpayments identified by the unit; and the total amount of overpayments actually collected by the unit;

(e) The number of recovery actions initiated by the Medicaid agency under its agreement with the unit; and the total amount of overpayments actually collected by the Medicaid agency under this agreement;

(f) Projections for the succeeding 12 months for items listed in paragraphs (a) through (e) of this section;

(g) The costs incurred by the unit;

(h) A narrative that evaluates the unit's performance; describes any specific problems it has had in connection with the procedures and agreements required under this subpart; and discusses any other matters that have impaired its effectiveness.

(Approved by the Office of Management and Budget under control number 0990–0162)

§ 1007.19 Federal financial participation (FFP).

(a) Rate of FFP. Subject to the limitation of this section, the Secretary will reimburse each State by an amount equal to 90 percent of the costs incurred by a certified unit which are attributable to carrying out its functions and responsibilities under this subpart.

(b) *Retroactive certification.* The Secretary may grant certification retroactive to the date on which the unit first met all the requirements of the statute and of this subpart. For any quarter with respect to which the unit is certified, the Secretary will provide reimbursement for the entire quarter.

(c) *Amount of FFP.* FFP for any quarter shall not exceed the higher of $125,000 or one-quarter of 1 percent of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State Medicaid program.

(d) *Costs subject to FFP.* FFP is available under this subpart for the expenditures attributable to the establishment and operation of the unit, including the cost of training personnel employed by the unit. Reimbursement shall be limited to costs attributable to the specific responsibilities and functions set forth in this subpart in connection with the investigation and prosecution of suspected fraudulent activities and the review of complaints of alleged abuse or neglect of patients in health care facilities. Establishment costs are limited to clearly identifiable costs of personnel that:

(1) Devote full time to the establishment of the unit which does achieve certification; and

(2) Continue as full-time employees after the unit is certified. All establishment costs will be deemed made in the first quarter of certification.

(e) *Costs not subject to FFP.* FFP is not available under this subpart for expenditures attributable to:

(1) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud;

(2) Efforts to identify situations in which a question of fraud may exist, including the screening of claims, analysis of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received;

(3) The routine notification of providers that fraudulent claims may be punished under Federal or State law;

(4) The performance by a person other than a full-time employee of the unit of any management function for the unit, any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers;

(5) The investigation or prosecution of cases of suspected recipient fraud not involving suspected conspiracy with a provider; or

(6) Any payment, direct or indirect, from the unit to the Medicaid agency, other than payments for the salaries of employees on detail to the unit.

§ 1007.21 Other applicable HHS regulations.

Except as otherwise provided in this part, the following regulations from 45 CFR subtitle A apply to grants under this subpart:

Subpart C of part 16—Department Grant Appeals Process—Special Provisions Applicable To Reconsideration of Disallowance (note that this applies only to disallowance determinations and not to any other determinations, e.g., over certification or recertification)
Part 74—Administration of Grants
Part 75—Informal Grant Appeals Procedures
Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services; Effectuation of title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedure for Hearings Under 45 CFR part 80
Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance.

PART 91—NONDISCRIMINATION ON THE BASIS OF AGE IN HHS PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Dated: May 22, 1989.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: November 3, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–7075 Filed 3–30–90; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[FRA Docket No. RSOR–9, Notice 3]

RIN 2130–AA51

Qualifications for Locomotive Operators; Change in Schedule for Public Hearings

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Scheduling of additional day for public hearing.

SUMMARY: On December 11, 1989 FRA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) concerning the establishment of minimum qualifications for locomotive operators. FRA has found it necessary to extend the duration of the public

hearings set for April 11, 1990 in order to permit additional time for witnesses to present their views on this proposal.

DATES: (1) Written comments must be received no later than May 4, 1990. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA will hold public hearings on this proposal on April 11, 1990 and April 12, 1990, at the times and places set forth below. Any person who desires to make an oral statement at the hearings is requested to notify the Docket Clerk at least five working days prior to the hearing, by phone or in writing.

ADDRESSES: (1) The public hearing previously scheduled for April 11, 1990 will be held on April 11, 1990 and a second day for the heairng will be held on April 12, 1990, at the times and places set forth below. The public hearings will be held at the following locations and times:

—Washington, DC (Wednesday, April 11, 1990 at 9:30 a.m.), room 2230, Nassif Building, 400 Seventh Street SW.; and

—Washington, DC (Thursday, April 12, 1990 at 9:30 a.m.), room 2230, Nassif Building, 400 Seventh Street SW.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the above address.

(2) Prepared statements (five copies) and written comments (three copies) should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

Persons desiring to make oral statements at the hearings should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Richard M. McCord, Regional Director for Safety, FRA, Portland, Oregon, (telephone: 503–326–3011); or Lawrence I. Wagner, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0628); or Edward R. English, Chief of Maintenance Programs Division, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–9186).

SUPPLEMENTARY INFORMATION: FRA has decided to add a second day for the receipt of oral comments on its NPRM concerning the qualifications of locomotive operators that appeared in the **Federal Register** on December 11, 1989. FRA is concerned that a single day of hearings will not afford interested parties a sufficient amount of time to adequately express their views concerning this proposal. FRA has already received a significant number of requests for time to present testimony on April 11, 1990. Moreover, the length of time being requested for presenting testimony and the length of time consumed by participants at FRA's initial hearings on this subject have prompted FRA to schedule a second day for presentation of testimony to ensure that all interested parties are given an appropriate opportunity to express their views.

Issued in Washington, DC, on March 28, 1990.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 90–7464 Filed 3–30–90; 8:45 am]

BILLING CODE 4910–06–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1244

[Ex Parte No. 385 (Sub-No. 3)]

Expansion of the ICC Waybill Sample Public Use File

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for comments on notice of proposed rulemaking.

SUMMARY: A notice of proposed rules was published in the **Federal Register** on February 1, 1990 at 55 FR 3416.

Comments on the proposed expansion of the ICC Waybill Sample Public Use File were to be filed by April 2, 1990.

Because of the need to coordinate the positions of its members and obtain supporting verified statements of carriers, the Association of American Railroads (AAR) has requested an extension of time for filing comments.

DATES: The time for filing comments on the Notice of Proposed Rulemaking has been extended to April 30, 1990.

ADDRESSES: An original and 10 copies of any comments referring to Ex Parte No. 385 (Sub-No. 3) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James A. Nash, tel: (202) 275–6884.

By the Commission, Louis Mackall, Acting Director, Office of Transportaion Analysis.

Noreta R. McGee,

Secretary.

[FR Doc. 90–7477 Filed 3–30–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

Northeast Multispecies Fishery; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold public hearings on an additional proposal to be included in Amendment 4 to the Northeast Multispecies Fishery Management Plan (FMP).

DATES: Written comments should be submitted on or before April 23, 1990, to the address below. The hearings will begin at 7 p.m., and are scheduled as follows:

1. April 16, 1990, Montauk, New York.
2. April 17, 1990, Galilee, Rhode Island.
3. April 19, 1990, Fairhaven, Massachusetts.

ADDRESSES: Written comments should be sent to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906. Copies of the public hearing document may be obtained from this address.

Clearly mark the outside of the envelope "Request for Amendment 4 public hearing document".

The hearings will be held at the following locations:

1. Montauk—Chamber of Commerce Office, Main Street, Montauk, New York.
2. Galilee—Dutch Inn, Great Island Road, Galilee, Rhode Island.
3. Fairhaven—Skipper's Inn, 110 Middle Street, Fairhaven, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Christopher Kellogg, Fishery Analyst, (617) 231-0422.

SUPPLEMENTARY INFORMATION: The Council has held a series of public hearings on proposals to be included in Amendment 4 to the FMP (55 FR 5863, February 20, 1990) and is considering an additional proposal for inclusion in the amendment in order to enhance measures to protect Southern New England and Mid-Atlantic yellowtail flounder. The proposal was brought to the attention of the Council's Multispecies Committee while the Committee was considering action under the Flexible Area Action System to protect Southern New England yellowtail flounder. However, the Council did not have an opportunity to consider this additional proposal before the hearings occurred and before this proposal could be discussed at a Council meeting. At its next meeting, the Council determined that this additional proposal provided conservation benefits sufficient to include it in Amendment 4.

The proposal contains several measures. (a) The entire Southern New England yellowtail closure area would close on March 1 (currently the part west of 71°30′ closes on April 1). The closure would prohibit all fishing gear capable of catching yellowtail flounder. (b) When the closure is not in effect, there would be a 5½" minimum mesh regulation in this area. The minimum mesh size would apply to 75 meshes from the end of the net in trawl nets and to all mesh in gillnets. (c) Vessels fishing with mesh smaller than the yellowtail mesh size may not have any yellowtail stored below or on deck in baskets or totes. Vessels with yellowtail and small mesh aboard must follow the regulations pertaining to the carrying of small mesh while in the Regulated Mesh Area.

Dated: March 27, 1990.

Richard H. Schaefer,

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

[FR Doc. 90–7414 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 63
Monday, April 2, 1990

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

Types and Quantities of Agricultural Commodities To Be Made Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949 in Fiscal Year 1990

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This Notice increases the quantities of agricultural commodities owned by the Commodity Credit Corporation to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949 as amended during fiscal year 1990.

FOR FURTHER INFORMATION CONTACT: Mary T. Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA (202) 447–3573.

SUPPLEMENTARY INFORMATION: Section 416(b) of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431(b) ("section 416(b)"), requires the Secretary of Agriculture to make available for donation overseas for each of the fiscal years 1986–1990 not less than certain minimum quantities of Commodity Credit Corporation ("CCC") uncommitted stocks. The minimum quantity of grains (wheat, rice, and feed grains) and oilseeds required to be made available shall be the lesser of 500,000 metric tons of CCC's uncommitted stocks or 10 percent of estimated year-end levels of CCC's uncommitted stocks. The minimum quantity of dairy products shall be 10 percent of CCC's uncommitted stocks, but not less than 150,000 metric tons to the extent that uncommitted stocks are available. The minimum quantity requirements may be waived by the Secretary if the Secretary determines, and reports to Congress, that there are insufficient valid requests for eligible commodities, under section 416(b)(3), to support the making available of commodities in such quantities.

I have previously determined that a total of 2,000,000 metric tons of grains and 34,000 metric tons of butter (frozen form only) shall be made available for donation under section 416(b) during fiscal year 1990. This determination was published in the **Federal Register** on October 10, 1989 (54 FR 41477). The purpose of this Notice is to inform the public that such previous determination is revised by increasing the quantity of corn to be made available to 3,000,000 metric tons and increasing the amount of sorghum to be made available to 3,000,000 metric tons.

Determination

Accordingly, I have determined that 6,000,000 metric tons of grains and 34,000 metric tons of dairy products shall be made available for donation overseas pursuant to section 416(b) during fiscal year 1990.

The kinds and quantities of commodities that shall be made available for donation are as follows:

	Commodity	Quantity (metric tons)
Grains and oilseeds	Corn	3,000,000
	Sorghum	3,000,000
Dairy products	Butter (frozen form only).	34,000
Total		6,034,000

Done at Washington, DC this 27th day of March 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–7465 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–10–M

Agricultural Research Service Intent To Grant an Exclusive License; Sandoz Crop Protection Service

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Sandoz Crop Protection Corporation, Des Plaines, Illinois, on U.S. Patent Application Serial No. 07/114,952, "Control of Undesirable Vegetation," filed October 30, 1987.

DATES: Comments must be received on or before June 1, 1990.

ADDRESSES: Send comments to: USDA–ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401–A, BARC–W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to Sandoz Crop Protection Corporation, Des Plaines, Illinois, an exclusive license to practice the invention disclosed in U.S. Patent Application Serial No. 07/114,952, "Control of Undesirable Vegetation," filed October 30, 1987. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so License this invention as Sandoz Crop Protection Corporation has submitted a complete and sufficient application for a License and has the plans and resources to expeditiously bring the said invention to public use.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 90–7412 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–03–M

Intent To Grant an Exclusive License; Amicale Industries, Inc.

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that

the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to Amicale Industries, Inc., New York, New York, on U.S. Patent Application Serial No. 07/299,174, "Sequential Oxidation and Reductive Bleaching in a Multicomponent Single Liquor System," filed January 19, 1989, and a continuation-in-part U.S. Patent Application Serial No. 07/446,826, "Sequential Oxidative and Reductive Bleaching of Pigmented and Unpigmented Fibers," filed December 6, 1989, to practice said inventions on certain luxury fabrics.

DATES: Comments must be received on or before June 1, 1990.

ADDRESSES: Send comments to: USDA–ARS-Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, Room 401–A, BARC–W, Beltsville, Maryland 20705.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to Amicale Industries Inc., New York, New York, an exclusive license to practice the inventions on certain luxury fabrics disclosed in U.S. Patent Application Serial No. 07/299,174, "Sequential Oxidation and Reductive Bleaching in a Multicomponent Single Liquor System," filed January 19, 1989, and a continuation-in-part U.S. Patent Application Serial No. 07/446,286, "Sequential Oxidative and Reductive Bleaching of Pigmented and Unpigmented Fibers," filed December 6, 1989. Patent rights to these inventions are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Amicale Industries, Inc., has submitted a complete and sufficient application for a license and has the plans and resources to expeditiously bring the said inventions to public use.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 90–7413 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–03–M

Federal Grain Inspection Service

Designation Renewal of the Chattanooga (TN) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Chattanooga Grain Inspection Company, Inc. (Chattanooga) as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: May 1, 1990.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Chattanooga's designation terminates on April 30, 1990, and requested applications for official agency designation to provide official services within the specified geographic area in the November 1, 1989, **Federal Register** (54 FR 46095). Applications were to be postmarked by December 1, 1989. Chattanooga was the only applicant for designation in its area and applied for designation in the entire area currently assigned to that agency. The Service announced the applicant name in the January 3, 1990, **Federal Register** (55 FR 44) and requested comments on the applicant for designation. Comments were to be postmarked by February 16, 1990. One comment in favor of renewing the designation was received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Chattanooga is able to provide official services in the geographic area for which the Service is renewing its designation. Effective May 1, 1990, and terminating June 30, 1993, Chattanooga is designated to provide official inspection services and Class X or Y weighing services in its specified geographic area as previously described in the November 1 **Federal Register**.

Interested persons may obtain official services by contacting Chattanooga at (615) 622–9089.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 26, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–7311 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on the Designation Applicants in the Geographic Area Currently Assigned to the State of Georgia (GA) and Schneider (IN) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Georgia Department of Agriculture (Georgia) and Schneider Inspection Service, Inc. (Schneider).

DATES: Comments must be postmarked on or before May 17, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

SprintMail users may respond to [PMARSDEN/FGIS/USDA].

Telecopier users may send responses to the automatic telecopier machine at (202) 447–4628, attention: Paul Marsden.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified

geographic areas in the February 1, 1990, **Federal Register** (55 FR 3429). Applications were to be postmarked by March 5, 1990. Georgia and Schneider were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 26, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–7309 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–EM–M

DEPARTMENT OF AGRICULTURE

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to Mid-Iowa (IA) Agency, the State of Oregon (OR), and Southern Illinois (IL) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Mid-Iowa Grain Inspection, Inc. (Mid-Iowa), Oregon Department of Agriculture (Oregon), and Southern Illinois Grain Inspection Service, Inc. (Southern Illinois).

DATES: Applications must be postmarked on or before May 2, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Mid-Iowa, located at 1114 ½—55th Avenue SW., Cedar Rapids, IA 52404, Oregon located at 635 Capitol Street, NE. Salem, OR 97310–0110, and Southern Illinois located at 101 South Cherry Street, O'Fallon, IL 62269 were designated under the Act on December l, 1987, as official agencies, to provide official inspection services.

The designation of each of these official agencies terminates on November 30, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Mid-Iowa, in the State of Iowa, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Blackhawk County line; the northern and eastern Buchanan County lines; the northern Linn County line; the northern Jones County line;

Bounded on the East by the eastern Jones County line; the eastern Cedar County line south to State Route 130;

Bounded on the South by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and

Bounded on the West by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to State Route 297; State Route 297 north to V49; V49 north to Blackhawk County.

The geographic area presently assigned to Oregon, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Oregon, except those export port locations within the State which are serviced by the Service.

The geographic area presently assigned to Southern Illinois, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the East by the eastern Lawrence, Wabash, Edwards, White, and Gallatin County lines;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to Interstate 270; Interstate 270 east to Interstate 70; Interstate 70 east to State Route 4; State Route 4 north to Macoupin County; the southern Macoupin County line; the eastern Macoupin County line north to a point on this line which intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); and

Bounded on the North from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines; the northern and eastern Jasper County lines south to State Route 33; State Route 33 east-southeast to U.S. Route 50; U.S. Route 50 east to the eastern Lawrence County line;

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Sigel Elevator Company, Inc., Sigel, Shelby County (located inside Decatur Grain Inspection, Inc.'s area).

Interested parties, including Mid-Iowa, Oregon, and Southern Illinois, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic

areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning December 1, 1990, and ending November 30, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 26, 1990.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 90–7310 Filed 03–30–90; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Supplement to the Final Environmental Impact Statement for the Land and Resource Management Plan Humboldt National Forest

In the Matter of Humboldt National Forest, Elko, Eureka, Lincoln, Nye. and White Pine Counties, Nevada

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact.

SUMMARY: The Forest Service will prepare a Supplement to the Final Environmental Impact Statement (FEIS) for the Land and Resource Management Plan for the Humboldt National Forest, approved August 19, 1986. The supplement is to document and disclose the analysis of effects of amending the Land and Resource Management Plan in regard to eight specific issues resolved in an appeal of the FEIS at the time of its approval. Although a draft amendment and environmental analysis, including a broad level of scoping, was initiated immediately following the Chief's decision regarding the appeal and the remanded issues, the decision to prepare a supplement to the FEIS was not made until the earlier analysis was complete. The agency is inviting further comments and suggestions on the scope of the analysis. Availability of the Supplement to the FEIS will be announced when it is released for review and comment in a subsequent **Federal Register** notice.

DATES: Comments concerning the scope of the analysis must be received by May 2, 1990 to be considered in the Draft Supplement to the EIS.

ADDRESSES: Send written comments to John P. Inman, Forest Supervisor, Humboldt National Forest, 976 Mountain City Highway, Elko, NV 89801.

FOR FURTHER INFORMATION CONTACT: Jerry A. Davis, Forest Planner, Humboldt National Forest (702–738–5171).

SUPPLEMENTARY INFORMATION: The Forest Service will prepare a Supplement to the FEIS for the Humboldt National Forest Land and Resource Management plan (LRMP). The Supplement will document and disclose the effects of amending the LRMP in response to specific issues raised in an appeal of the decision to approve the LRMP. The Chief of the Forest Service reviewed the appeal and remanded these issues back to the Regional Forester with specific information to be incorporated in the LRMP in the form of an amendment. The intent of the amendment is to clarify management direction included in the LRMP and to make minor corrections to the FEIS.

Analysis of the effects of the amendment items indicate they will change neither the goals and objectives nor the intent of the original standards and guidelines. Prescriptions for specific management areas will remain unchanged and the desired future condition will remain as described in the original LRMP. Outputs projected in the LRMP and disclosed in the FEIS were used to compare the effects of alternatives. The effect of proper use and riparian standards to be more clearly stated in the proposed amendment was already considered in projecting the outputs used in the original LRMP.

The LRMP was approved on August 19, 1986. Resolution of the appeal with direction to amend the LHMP occurred on June 20, 1989. Specific issues to be dealt with in this amendment are:

1. Clearly reflect that the National Cooperative Soil Survey (NCSS) soil specific T-level (soil loss tolerance level) will be used when available. When the NCSS T-level value is not available, the 2–3 ton soil loss T-level defined in the Forest Plan will be used.

2. Include minimum standards for satisfactory condition of rangelands, to be used where specific standards for vegetation types and environmental conditions are not covered by scorecards.

3. Include standards and guidelines for forage utilization for the various grazing systems and management areas on the Forest. These standards are to be used to guide development of allotment specific utilization standards for each grazing allotment management plan during initial development or revision.

4. Incorporate additional riparian management direction and standards and guidelines.

5. Review the existing sage grouse standards and guidelines and, if necessary, amend the Forest Plan to include additional standards and guidelines.

6. Re-examine the method by which Management Indicator Species (MIS) were selected and consider the need to include additional MIS.

7. Make minor corrections regarding inconsistencies between the Record of Decision and the Forest Plan in recreation operating standards for the White Pine Management Area and miles of trail to be constructed and reconstructed.

8. Revise the definition of "zone of influence" to expand it to metropolitan areas of western Nevada.

Comments and suggestions related to these issues are invited, in writing, and will be addressed in the Supplement to the FEIS. Public comment was requested initially in the form of an information letter mailed November 29, 1989. An attempt was made to contact all respondents to the DEIS for the LRMP. Also contacted were persons who asked to be informed of NEPA projects on the Humboldt National Forest. In addition, since the amendment involved issues primarily related to livestock grazing, all persons and organizations holding grazing permits on the Humboldt N.F. were provided the opportunity to comment. In light of this initial scoping effort and subsequent environmental analysis, a Draft Supplement, including the proposed amendment, will be filed in May, 1990, with a Final Supplement filed by July 15, 1990. Copies of the Draft Supplement will be mailed to those who provide comment during the scoping phase and anyone who requests a copy.

The comment period for the draft Supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

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, *City*

of Angoon v. *Hodel, 803 F.2d 1016. 1022 (9th Cir. 1986) and 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.

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).

J. S. Tixier, Regional Forester, Intermountain Region is the responsible official and John P. Inman. Forest Supervisor. Humboldt National Forest is responsible for preparing the supplement to the FEIS amending the Land and Resource Management Plan.

Dated: March 27, 1990.

John P. Inman,

Forest Supervisor, Humboldt National Forest.

[FR Doc. 90–7463 Filed 3–30–90; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Indiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission of Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on April 24, 1990, at the Indiana School of Law, Moot Court Room #101, 735 West New York, Indianapolis, Indiana. The purpose of this meeting is to conduct orientation for the newly rechartered Committee and to discuss program plans and activities for FY 1990. A briefing session will be held by representatives from selected civil rights organizations to provide an overview of significant civil rights issues in Indiana.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hollis E. Hughes, Jr., or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division, (816) 426–5253 (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 26, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–7386 Filed 3–30–90; 8:45 am]

BILLING CODE 6335–01–M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 5 p.m., on Thursday, April 26, 1990, at the Memorial Union, Forum Room, Washburn University, 1700 College Avenue, Topeka, Kansas. The purpose of the meeting is to receive information on the nature and extent of bigotry-related crime and harassment on selected college campuses in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ana Riojas, or Ascension Hernandez, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 26, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–7387 Filed 3–30–90; 8:45 am]

BILLING CODE 6335–01–M

Nevada Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Nevada Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:00 noon on April 27, 1990, at the Tonapah Room, Holiday Inn and Casino, 3475 Las Vegas Boulevard, South, Las Vegas, Nevada 89109. The purpose of the meeting is to plan Committee projects and future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Margo Piscevich or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 26, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–7388 Filed 3–30–90; 8:45 am]

BILLING CODE 6335–01–M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Utah Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 9 p.m., on April 24, 1990, at the Airport Holiday Inn, 1659 West North Temple, Salt Lake City, Utah 84116. The purpose of the meeting is to obtain information on statewide aging and Native American issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert E. Riggs or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 23, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90-7389 Filed 3-30-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 12-90]

Foreign-Trade Zone 68, El Paso, TX; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting authority to expand its zone to include four new sites in El Paso, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 19, 1990.

FTZ 68 was approved by the Board in 1981 (Board Order 175, 46 FR 22918, April 22, 1981), and expanded in 1984 (Board Order 255, 49 FR 22842, 6/1/84). The City-sponsored zone currently involves the Butterfield Trail Industrial Park (590 acres) at the El Paso International Airport. A separate zone project involving a second grantee (Westport) was approved for the El Paso area in 1988 (FTZ 150, Board Order 386, 53 FR 28030, July 26, 1988).

The proposed expansion of the City's project would add four new sites (1,200 acres) to FTZ 68 in El Paso. The existing site at the airport is designated as Site 1 and the new sites would be designated as Sites 2, 3, 4, and 5. *Site 2* (467 acres) would involve a group of private and public industrial parks in the Lower Valley section of El Paso, along Americas Avenue near the Zaragosa Bridge to Mexico. They are the Pan America Center for Industry (PACI) development; the adjacent El Paso Public Service Board property; the Ivey Development/AAA (across from PACI); and, the Ysleta Industrial Park. *Site 3* (716 acres) involves a group of three private industrial parks in eastern El Paso in the vicinity of I-10 and Americas Avenue. They are the Vista Del Sol park; the B-W Business Park; and, the Saab Development. *Site 4* (128 acres) is at the Phelps Dodge Copperfield Industrial Park at Hawkins Boulevard and North Loop Drive in Central El Paso. *Site 5* (95 acres) is at the WFF Industries Park located on Highway 54 in northeast El Paso. The basis stated for this proposed extensive expansion is El Paso's high level of U.S.-Mexican trade related activity.

No manufacturing approvals are being sought in the application. Such approvals would be requested from the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Suite 500, Houston, TX 77057-3012; and, Colonel Steven M. Dougan, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, NM 87103-1580.

Comments concerning the proposed expansion are invited in writing from interested parties. They should be addressed to the Executive Secretary at the address below and postmarked on or before May 11, 1990.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, 3600 E. Paisano, Bldg. B, Room 134, Bridge of the Americas, P.O. Box 9516, El Paso, TX 79985.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: March 23, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-7449 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-412-027]

Diamond Tips From United Kingdom; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on diamond tips from the United Kingdom. Interested parties who object to this revocation must submit their comments in writing not later than April 30, 1990.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1972, the Department of Commerce ("the Department") published an antidumping finding on diamond tips from the United Kingdom (37 FR 6665). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than April 30, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by April 30, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by April 30, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: March 28, 1990.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90-7493 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-801]

Final Determination of Sales at Less Than Fair Value; Certain Steel Pails From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that certain steel pails from Mexico (hereinafter steel pails) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of steel pails from Mexico. The ITC will determine within 45 days of the publication of this notice whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–4136 and 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that steel pails from Mexico are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On November 15, 1989, the Department published an affirmative preliminary determination (54 FR 47542). At the request of the respondent, Envases de Plastico, S.A. de C.V. (Envases), we postponed our final determination until no later than March 23, 1990, pursuant to section 735(a)(2)(A) of the Act (54 FR 50523, December 7, 1989). Verification of Envases' questionnaire responses was conducted in Mexico from January 8 through 12, 1990, and in Houston, Texas at the facilities of Envases' unrelated commissionaire, Yorktown Associates, on January 15, 1990.

Interested parties submitted comments for the record in their case briefs dated February 7, 1990, and in their rebuttal briefs dated February 14, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Prior to January 1, 1989, certain steel pails were classified under item 640.3020 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under HTS subheadings 7310.21.00 and 7310.29.00.

The scope of this investigation includes certain steel pails from Mexico, which are cylindrical containers of steel, with a volume (capacity) of 1 through 7 gallons, an outside diameter of 11¼ inches or greater, and a wall thickness of 29–22 gauge steel, presented empty, whether or not coated or lined. This investigation includes, but is not limited to, openhead, tighthead, and dome top steel pails.

Period of Investigation

The period of investigation is January 1, 1989 through June 30, 1989.

Such or Similar Comparisons

We have determined that all of the steel pails covered by the investigation constitute one such or similar category.

Product comparisons were made on the basis of the following criteria, listed in order of importance: volume (capacity), steel gauge, type of opening, interior lining, fittings and lithography. Where there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States, sales of the most similar merchandise were compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of steel pails from Mexico to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

As provided for in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price, where the merchandise was sold to unrelated purchasers prior to importation into the United States. We calculated purchase price based on CIF, duty-free prices to unrelated customers in the United States. We made deductions, where appropriate, for rebates, brokerage and handling, foreign inland freight, and U.S. inland freight.

Where the merchandise was sold to unrelated purchasers after importation into the United States, we used exporter's sales price (ESP) to represent the United States price, as provided for in section 772(c) of the Act. We calculated ESP based on CIF, duty-free prices to unrelated customers in the United States. We made deductions, where appropriate, for rebates, discounts, commissions, foreign inland freight, brokerage and handling, U.S. inland freight, credit expenses, and indirect U.S. selling expenses.

We recalculated the indirect selling expenses reported by Envases on ESP sales in order to allocate such expenses on a percentage basis of U.S. sales value, rather than a per-unit amount.

We recalculated the inventory carrying expense reported by Envases on ESP sales in order to account for the average time the merchandise is in Mexico as well as in the United States. See our response to Comment 5.

In accordance with section 772(d)(1)(c) of the Act, we added to United States price the amount of value-added tax (VAT) that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of VAT added to United States price by applying the home market VAT rate to a United States price net of all charges and expenses that would not have been incurred had the product been sold in the home market.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated

foreign market value based on the packed, delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for inland freight and rebates. We deducted home market packing costs and added U.S. packing costs.

On comparisons involving purchase price sales, we made a circumstance of sale adjustment where commissions were paid in both the home and U.S. markets, in accordance with 19 CFR 353.56(a). Where commissions were paid only in the U.S. market, we added the amount of the U.S. commission to the foreign market value and subtracted the lesser of home market indirect expenses or U.S. commissions, pursuant to 19 CFR 353.56(b)(1). For all purchase price transactions, we made a circumstance of sale adjustment for differences in credit terms.

On comparisons involving ESP sales, we deducted credit expenses. We also deducted indirect selling expenses, in accordance with 19 CFR 353.56(b)(2).

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations. Based on information obtained at verification, we recalculated Envases' reported costs for lithography and coating materials costs. See our responses to Comments 2 and 7 below.

We recalculated the indirect selling expenses reported by Envases on home market sales to allocate them as a percentage of sales value, rather than on a per-unit basis.

We made a circumstance of sale adjustment in accordance with section 773(a)(4)(B) of the Act to eliminate any differences in taxation between the two markets. Because the home market prices were reported net of VAT, this adjustment was made by adding the hypothetical tax on the U.S. sale to both the United States price and the foreign market value.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the period of investigation. In place of the official certified rates, we used the average monthly exchange rates published by the International Monetary Fund as best information available.

Interested Party Comments

Comment 1: Envases claims that the Department should compare U.S. sales to home market sales at the same level of trade, in accordance with 19 CFR 353.58. Envases claims that it sells to three distinct levels of trade based on annual purchasing estimates, namely small, large, and "supergrade" purchase volume categories. As further support for its comparison criteria, Envases contends that under section 773 of the Act, comparisons must only be made between customers who purchase comparable commercial quantities and, therefore, sales made at different quantity levels should be excluded from comparisons of sales at that level. In addition, while acknowledging that its request to consider "supergrade" customers as a distinct level of trade was not made until verification, Envases claims that the request does not constitute new information because the factual information upon which the request was based was submitted to the Department in a timely manner.

Petitioners contend that Envases has failed to support its claim that its pricing practices are based on differences in quantities or alleged levels of trade and, therefore, the merchandise should only be compared on the basis of physical characteristics. Petitioners claim that Envases' customer groupings are arbitrary and do not reflect any formal pricing policy for the claimed levels of trade. Petitioners further state that Envases' customer categorization is inconsistent, noting several instances where a particular customer was placed in more than one category, and also noting instances where sales of identical pails to the same customer are reported with identical prices in different customer volume levels. As well, petitioners cite examples where the net price to a customer in one category is the same for an identical pail to a customer in a different category. Finally, petitioners argue that Envases' claim for the "supergrade" customer classification came too late in the investigation and is, therefore, untimely under 19 CFR 353.31.

DOC Position: Based on our analysis of the questionnaire response and our findings at verification, we have determined that Envases did not adequately support its categorization of customers as constituting distinct levels of trade. As we stated in our verification report, there is no official company policy establishing these purchase volume categories, nor did we observe any evidence that these categories represent distinct, definable levels of trade. In addition, the response contained numerous discrepancies between the sales listings and the supporting documentation for the categorization of customers, as noted by the petitioners. Furthermore, additional documentation provided by Envases at verification to support its contention also contained numerous discrepancies in the customer categorization methodology and pricing claims between categories. As a result, we do not consider that Envases has demonstrated that its customer categories constitute different levels of trade.

According to 19 CFR 353.55, when comparing U.S. price with foreign market value, the Department normally will use sales of comparable quantities of merchandise. In this case, Envases attempted to demonstrate that prices varied depending on whether the purchaser is a large-volume or small-volume customer. From our review of the price and quantity information reported by Envases, there is no clear trend that customers in one category pay prices different from those that customers in other categories pay.

Comment 2: Petitioners claim that the Department should reject Envases' claim for lithography costs because the charges for lithography performed by a related company, Industria Metalica del Envase, S.A. de C.V. (IMESA), do not represent "arm's length" transactions. Therefore, petitioners contend that the Department should use best information available (BIA) for these costs to calculate the difference in merchandise adjustment. As BIA, petitioners propose calculating lithography costs based on Envases' verified in-house painting data and petitioners, own costs, as submitted to the Department.

Envases states that, in accordance with Departmental practice expressed in Certain All-Terrain Vehicles from Japan (54 FR 4864, 4868, January 31, 1989) (ATVs), the Department should accept Envases' reported lithography costs because the transfer prices charged by the related company, IMESA, are above IMESA's costs. As an alternative, Envases suggests that if the Department does not accept Envases' reported expenses, it should use IMESA's lithography costs as presented to the Department at verification.

DOC Position: For purposes of constructed value, section 773(e) of the Act provides that transactions between related parties will be disregarded if they do not fairly reflect market prices. With respect to related party transactions in a situation involving a difference in merchandise adjustment, the statute is silent. Even assuming that an arm's length analysis were appropriate, we would be unable to determine in this case whether the transfer prices at issue were, in fact, made at arm's length. IMESA did not provide lithography services to any other entities, and Envases did not

purchase these services from any other entities.

Therefore, lacking arm's length prices, we have used IMESA's costs for lithography presented at verification as best information available for the calculation of difference in merchandise adjustments. However, we recalculated these costs using IMESA's material and labor costs and applying the verified direct overhead rate for Envases' base coating costs to obtain an average per-color cost. We did not use IMESA's variable overhead rate included in its cost worksheet because it appeared to include IMESA's company overhead expenses as well as direct overhead associated with lithography operations.

Comment 3: Envases claims that the Department should adjust home market price by deducting "quantity extra" surcharges applied to small volume home market sales.

Petitioners contend that this claim is untimely under 19 CFR 353.31(a)(i) as it was not made until the beginning of verification. Even if it were timely, petitioners argue that the "quantity extra" was not applied on a consistent basis.

DOC Position. We agree with petitioners and have not made any adjustment based on a "quantity extra" charge. Envases first made this claim and provided the data for the price adjustment at the start of verification. Therefore, it is untimely under 19 CFR 353.31(a)(i).

Comment 4: Petitioners contend that the Department should reject Envases', claim for home market commissions as the claim was not made until a month after the preliminary determination and after the original scheduled date for verification.

Envases responds that the claim was first made prior to the preliminary determination, a week before the original scheduled verification and two months prior to the actual verification date. Consequently, its claim is timely under 19 CFR 353.31 and the commission expense should be allowed.

DOC Position: We agree with Envases. The commission expense was reported in time for consideration and we have made a circumstance of sale adjustment for comparisons involving home market sales with commissions, in accordance with 19 CFR 353.56(a)(2).

Comment 5: Petitioners contend that Envases' reported inventory carrying expense for ESP sales does not account for time in inventory while the merchandise is in Mexico. Therefore, the Department should recalculate this expense to incorporate this component.

Envases contends that it reported its U.S. inventory carrying expense correctly. Its calculation includes the Mexican inventory period since its methodology incorporates merchandise in inventory from the time the product leaves the plant.

DOC Position: We verified that Envases' inventory carrying expense included inventory time in Mexico. Envases' calculated this part of the inventory carrying expense using the U.S. interest rate over the entire inventory period. Since Department policy is to use the home market interest rate for the inventory period that the merchandise is in the home market, we recalculated this expense to account for the time the merchandise is in Mexico, using the verified Mexican interest rate. Envases did not provide separate Mexican and U.S. inventory periods. Therefore, as best information available, we calculated the Mexican inventory period using export shipment data provided at verification.

Comment 6: Envases contends that certain home market sales were not made in the ordinary course of trade because they were samples or single, small volume sales to potential customers. Consequently, in accordance with 19 CFR 353.46, these sales should be excluded from calculation of foreign market value.

DOC Position. The information that Envases has provided in the questionnaire responses and at verification does not prove that the sales in question were samples or otherwise outside the ordinary course of trade. The sales in question appear no different from the other home market sales reported in that they were of similar quantities and prices as sales made to other customers. Consequently, we have rejected Envases' claim.

Comment 7: Petitioners contend that the Department should reduce the cost reported for interior coatings materials, as incorporated into the difference in merchandise adjustment, to reflect the discrepancy between Envases' reported and actual costs, as noted in the verification report.

Envases responds that this discrepancy represents a very small percentage of the total cost of manufacture for each pail. Therefore, the discrepancy should be disregarded as insignificant.

DOC Position: We have corrected the reported interior coatings costs based on our findings at verification.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of steel pails from Mexico, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Mexico exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Envases de Plastico, S.A. de C.V.	75.57
All others	75.57

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to steel pails, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on steel pails from Mexico entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: March 23, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-7447 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DS-M

INTERNATIONAL TRADE ADMINISTRATION

[A-122-004]

Steel Reinforcing Bars From Canada; Intent To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on steel reinforcing bars from Canada. Interested parties who object to this revocation must submit their comments in writing not later than April 30, 1990.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1964, the Department of Commerce ("the Department") published an antidumping finding on steel reinforcing bars from Canada (29 FR 5347). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than April 30, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by April 30, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department,s intent to revoke by April 30, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Richard W. Moreland

Acting Deputy Assistant Secretary for Compliance

[FR Doc. 90-7494 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-559-804]

Final Negative Countervailing Duty Determination: Certain Computer Aided Software Engineering Products From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Singapore of certain computer aided software engineering products (CASE software) as described in the "Scope of Investigation" section of this notice.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that no benefits which constitute bounties or grants, within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to Singaporean manufacturers, producers, or exporters of CASE software.

Case History

Since the last **Federal Register** publication pertaining to this investigation (Preliminary Affirmative Countervailing Duty Determination: Certain Computer Aided Software Engineering Products from Singapore, 55 FR 1596, (January 17, 1990) (Preliminary Determination)), the following events have occurred.

We conducted verification in Singapore, from Februaıy 5 though February 10, 1990, of the questionnaire responses of the Government of Singapore (GOS) and Computer Systems Advisers Research Pte., Ltd. (CSAR).

Respondents filed supplemental responses on January 25, 1990, and March 9, 1990. ADAPSO, a computer software and services industry association, filed two submissions on March 9, and 20, 1990. Case briefs were filed by petitioner and respondents on March 14, 1990; rebuttal briefs were filed on March 16, 1990. Respondents made an additional submission on March 22, 1990; however, this submission was filed too late for consideration in this final determination.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedules (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item number(s) are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

The products covered by this investigation are "front-end" Computer Aided Software Engineering (CASE) tools, including all updated versions, which have been imported from Singapore, whether labelled or unlabelled, on a carrier medium. These software products are personal computer-based tools which run in the Disk Operating System (DOS) environment and are designed to automate the various stages of the software development tasks of defining user requirements, conducting systems analysis activities, and creating a detailed design specification for the software system under development. There are a number of standardized engineering techniques which front-end CASE tools are designed to automate. These include techniques of "structured analysis," "structured design," and "data modeling," among others. All front-end CASE tools are designed to

produce logically validated and documented systems specifications, which in turn are used as detailed "blueprints" for the actual writing of application codes.

These front-end stages of the software development lifecycle are contrasted with the "back-end" life-cycle stages of coding, testing, and maintenance. Back-end CASE tools are not covered by this investigation.

Although front-end CASE tools generally are imported on recorded floppy disks, they may also be imported on other carrier media. The subject merchandise is currently classifiable under HTS item numbers 8524.21.30.80, 8524.22.20.00, 8524.23.20.00, and 8524.90.40.80.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1988, which corresponds to the fiscal year of CSAR. Based upon our analysis of the petition, the responses to our questionnaires, and verification, we determine the following:

I. Programs Determined Not To Confer Bounties or Grants

We determine that the following programs do not confer bounties or grants on the manufacture, production, or exportation of CASE software in Singapore.

A. Information Technology Institute (ITI) Development of CASE Software

The Committee on National Computerization (CNC) was formed in 1980 to study and recommend a policy for national computerization. This committee's report, which was completed in October 1980, contained a series of recommendations, including the creation of a National Computer Board (NCB), to implement CNC's recommendations. The three major tasks of the NCB are (1) to promote national computerization by taking the lead in computerizing the public sector, (2) to coordinate the training and development of computer software professionals, and (3) to promote the growth of the computer software and services industry. The main economic objective set by the government for the computer software and services industry was to develop Singapore into a software center by the 1990's.

With the launching of the national computerization efforts in 1981, the NCB and the Singapore Ministry of Defense (MOD) conducted two parallel and coordinated initiatives in software engineering. The MOD established the Information Engineering Centre (IEC) to address the productivity and quality issues in software development life-cycles. The NCB established a Software Engineering Department (SED) to develop software creation methodologies and productivity tools. The efforts of the IEC and the SED were combined in 1983 into the Joint Software Engineering Program (JSEP).

One of the first experimental projects of JSEP was the development of software tools to support certain in-house software engineering methods. The first prototype was a data dictionary, which was developed in September 1983. After testing within the government, it was determined that the prototype was too slow. Thus, continued work on the prototype was terminated. Following the termination of the data dictionary project, the JSEP initiated an effort in 1985 to develop more advanced software engineering tools running on personal computers. The result of this initiative was the CASE product known as Picture Oriented Software Engineering (POSE).

In 1986, JSEP became the Information Technology Institute (ITI), as part of the NCB. ITI undertakes applied research and development in information technology. ITI has five main objectives: (1) to collaborate with industry in joint applied research projects by offering innovations of potential commercial value to the local industry for product development and marketing; (2) to transfer technology and expertise from international technology leaders to both the local industry and the computer community; (3) to build an indigenous capability in exploiting state-of-the-art information technology; (4) to foster an applied research culture in Singapore and help accelerate the growth of capable and enterprising research and development manpower in Singapore; and (5) to promote the creative and productive use of information technology in industry and society. ITI focuses its research efforts on software engineering, computer and communications technology, and knowledge systems.

In February 1986, NCB invited 20 companies in Singapore to bid for the rights to market the POSE prototypes and to participate in the continued development of the product. The guidelines for submission of bids required each bid to contain specific proposals concerning: (1) marketing, (2) pricing, (3) royalty payment, (4) continued joint development, and (5) product ownership. Of the 20 companies invited, two submitted bids. However, only the proposal of Computer Systems Advisers Pte., Ltd. (CSA), the parent company of CSAR, met ITI's threshold criteria by addressing each factor listed in ITI's bid guidelines. Therefore, ITI "shortlisted" CSA for further evaluation and discussion of its bid.

As part of its evaluation of CSA's bid, ITI officials traveled to the United States to visit potential distributors of POSE and provide product demonstrations. As a result of this trip, it was determined by ITI and CSA that in order to market POSE effectively, CSA would need to establish a subsidiary in the United States. Furthermore, in the course of its discussions with CSA, ITI questioned the sales projections made by CSA in its bid. ITI believed, on the basis of its knowledge of the CASE market, that CSA's sales projections were overly conservative. Pursuant to its evaluation of CSA's bid and discussions with CSA, ITI worked with CSA in the development of a revised business plan. This revised business plan provided for the establishment of a U.S. subsidiary and set out a second set of sales projections premised upon a revised marketing strategy and new set of assumptions and estimations concerning the size and growth of the front-end CASE market. During verification we examined the sales projections in CSA's revised business plan. As a result of our review, we have no basis to believe that the revised sales projections were unrealistic or otherwise unreasonable.

CSA was finally chosen by ITI as its "industry partner" on the basis of the revised business plan and because: (1) CSA was developing a UNIX-based CASE tool for minicomputers (2) CSA had an established distribution system and was planning to establish a U.S. subsidiary for the marketing of POSE, and (3) CSA was committed to further development of POSE in conjunction with ITI. In October 1986, the parties signed a two-year contract for the worldwide marketing and continued commercial development of POSE. Subsequently, CSA assigned its rights and delegated its obligations under the agreement to its subsidiary, CSAR. After the 1986 agreement expired, a second contract was signed in 1988.

In order to determine whether CSA received a countervailable benefit from its agreement with ITI we must first determine whether the benefit, if any, was provided to a specific enterprise or industry, or group of enterprises or industries. Because ITI's applied research and development work is limited to the information technology industry and because POSE was provided to one particular company, we determine that any benefit provided by

ITI was limited to a specific enterprise or industry.

In the context of determining if CSA received any benefit we examined whether ITI acted reasonably from a commercial standpoint in entering into the two agreements with CSA. In 1986 and 1988, prior to the signing of the two contracts with CSA, ITI was in a position to evaluate the total expected royalties it would earn and the total costs it had incurred and would incur. In both 1986 and 1988, the discounted value of ITI's expected revenues from the second set of sales projections was greater than ITI's accumulated incurred costs and discounted future costs. On this basis, we determine that there was a commercial basis for ITI to enter into the agreements with CSA. Because ITI acted reasonably from a commercial standpoint, we determine that no benefit was provided to CSA under this program.

B. Alleged Operational Subsidy

Petitioner alleged that the Government of Singapore provided a $15 million grant to CSAR and loaned government employees to CSAR, at no cost to CSAR, for the purpose of launching POSE software in the U.S. market. We verified that a $15 million grant was not provided to the respondent company.

However, for a period of one year, commencing in November 1987, one ITI staff member worked for CSAR's U.S. subsidiary providing training and technical support. The employee remained on the payroll of NCB during the assignment to CSAR. However, CSAR agreed to reimburse NCB for the employee's remuneration and all benefits to which the employee was entitled as an employee of the NCB. We verified that the employee's salary and bonuses for the year-long attachment were reimbursed to NCB by CSAR. Therefore, we determine that no benefit was provided under this program.

II. Programs Preliminarily Determined Not to Be Used

We determine that the following programs were not used by the manufacturers, producers, or exporters in Singapore of CASE software during the review period.

A. Product Development Assistance Scheme (PDAS)

PDAS was introduced to encourage local Singapore companies to develop and design new products or processes. This program is administered by the Economic Development Board (EDB) under the powers delegated by the Minister of Trade and Industry to the EDB in the EDB Act. It provides reimbursement of certain product development expenses to companies with at least 30 percent ownership by Singaporeans. If a commercial product is developed and then successfully marketed, a royalty arrangement is employed in order for the company to pay back the original grant.

On verification we found that CSA received a PDAS grant with respect to its UNIX-based CASE product. EDB records showed that CSA received funding for the research and development of this product between 1985 and 1987. We verified that the funds were used to partially pay for salaries, hardware and software purchases, and computer rentals solely related to CSA's UNIX-based CASE product. Therefore, we determine that there was no benefit conferred upon the subject merchandise under this program.

B. Double Deduction of Research and Development Expenses

C. Expansion of Established Enterprises

D. Investment Allowance

E. Initiatives in New Technologies

F. Software Development Assistance Scheme

G. Capital Assistance Scheme

H. Research and Development Assistance Scheme

I. OHQ Operational Headquarters Program

J. Double Deduction of Export Promotion Expenses

K. Production for Export

L. Warehousing and Servicing Incentives

M. Small Industries Technical Assistance Scheme

Comments

Comment 1: Respondents argue that the petitioner does not have standing to pursue the investigation because (a) it does not produce a "like product" and (b) the U.S. industry does not support the petition.

Petitioner contends that it does have standing because it produces a "like product" and, in support of its position, cites an article in PC Magazine, which compares both petitioner's product and POSE. Petitioner argues that because the purpose of the article was to compare front-end CASE tools, by definition, all of the tools compared are "like products." Lastly, petitioner argues that the U.S. industry has not provided anything to the Department which states that it does not support the petition.

DOC position: Under the Department's procedural regulations, any allegation that the petitioner lacks standing must be submitted not later than 10 days before the scheduled date of the preliminary determination. (*See* 19 CFR 355.31(c)(2).) Respondents first submitted standing arguments on January 3, 1990. The preliminary determination in this investigation was January 8, 1990. Therefore, respondents' arguments that petitioner lacks standing were untimely.

While on March 20, 1990, after the submission of petitioner's rebuttal brief, we received a letter from ADAPSO requesting the termination of the investigation, we have not terminated the investigation because it is not clear that ADAPSO represents a majority of the domestic industry. For example, we also received a letter from Index Technologies shortly before our final determination, which urged caution in the application of the countervailing duty law to software products, such as CASE software, but did not request termination of the investigation or indicate its lack of support for the petition. Information on the record indicates that Index Technologies represents a significant share of U.S. production of front-end CASE software. Consequently, the degree of affirmative opposition to the petition was unresolved prior to the date of this final determination.

Comment 2: Respondents argue that the Department incorrectly concluded in its preliminary determination that software on a carrier medium is merchandise subject to the countervailing duty law. Specifically, respondents claim that: (1) Imports of the subject merchandise are not subject to consumption entry procedures because their value is under five dollars (*see* 19 U.S.C. 1321(a)(2)), and because they qualify as business records under HTS General Note 5(c); (2) software is not a good under the U.S. tariff schedules; (3) treating software as merchandise is inconsistent with all U.S. trade programs and multilateral negotiations; (4) the embodiment of software on media does not "create merchandise"; (5) the Department's position is inconsistent with those of other government agencies; and (6) the application of the Department's six-point merchandise analysis is inappropriate in that the physical attributes of pre-packaged software are conferred upon the product after importation.

DOC Position: It has been the Department's position since the initiation of this investigation that

software on a carrier medium is merchandise subject to the countervailing duty law. In the preliminary determination, the Department commented extensively upon this subject in response to numerous issues raised by the respondents. The Department's exposition in the preliminary determination reflected the results of extensive research and consultations with other government agencies. The particular arguments made by respondents above were addressed in our preliminary determination. (See Preliminary Determination.) Other issues with respect to this topic are discussed below.

Comment 3: Respondents argue that software is not merchandise because the Standard Industrial Classification Code (SIC) identifies firms "engaged in the design, development, and production of pre-packaged computer software" as a service industry, rather than a manufacturing industry.

DOC Position: We do not find the SIC classification dispositive of this issue. Moreover, the Department learned from its consultations with other government agencies that the Technical Committee on Industrial Classification, the committee responsible for reviewing all proposals for the SIC, initially recommended that pre-packaged software be placed in the manufacturing section of the SIC. However, the committee decided to keep pre-packaged software in the service classification merely for the purpose of historical continuity.

Comment 4: Respondents argue that software, whether or not it is on a carrier medium, is duty-free and must be provided an injury test. Furthermore, the product under investigation entered the U.S. during the review period without a duty being imposed upon it because the customs value of the product was under five dollars (*see* 19 U.S.C. section 1321(a)(2)) and therefore, an injury test is required.

DOC Position: As noted in our preliminary determination, Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the subject merchandise, CASE software on a carrier medium, is dutiable. Therefore, no injury test is required.

Moreover, the fact that the subject merchandise entered the U.S. during the review period under a special U.S. Customs' administrative procedure which permits low value imports to enter without the payment of duties is irrelevant. The merchandise under investigation is still subject to Customs' jurisdiction and payment of duties would have been required but for the low customs value of the product imported. Therefore, software on a carrier medium is dutiable (though it may enter the U.S. without the payment of duty) and no injury test is required.

Comment 5: Petitioner argues that it is probable that all of the work done on the UNIX-based CASE tool for which CSA received a PDAS grant was directly applicable to the continued development of POSE. Petitioner contends that not only did CSAR learn from the experience of the project, but once the conceptual framework for the CASE tool was created, much of the actual software product could be translated or "migrated" from UNIX to DOS.

Respondents argue that even though CSA received a grant for its UNIX-based tool under the PDAS program, the POSE project received no benefits from the program. Respondents claim that because the two products are based on different methodologies, they are completely different products which would make the sharing of technology impractical. Respondents further argue that the PDAS program confers no countervailable benefit because it is not specific to any industry.

DOC Position: Based on long-standing Department practice, where a subsidy is tied to a particular product, the benefit of the subsidy is allocated entirely to that product. (See, Industrial Nitrocellulose From France; Final Results of Countervailing Duty Administrative Review, 52 FR 833 (January 9, 1987).) We verified that the PDAS grant CSA received was tied to CSA's UNIX-based project and, therefore, found that no benefit was provided to POSE. Because we have determined that the PDAS grant did not benefit the subject merchandise, we do not reach the question of specificity.

Comment 6: Petitioner argues that the bidding process for the POSE prototypes was not fair and open because: (1) The president of CSA was also on the NCB Board of Directors at the time of the 1986 agreement between CSA and ITI; (2) no other company was shortlisted and allowed to submit a revised plan; and (3) ITI sent a representative on a market evaluation trip with CSA officials soon after shortlisting.

Respondents argue that the bidding process established by NCB was fair and open because it included numerous potential companies. With respect to the alleged conflict of interest question, respondents contend that the president of CSA was not on the NCB Board of Directors when the POSE prototypes were put out to bid and that the NCB Board of Directors is only a policy-making body and did not make the decision to award POSE to CSA. Additionally, respondents claim that ITI's criteria for evaluating the bids submitted reflected an objective and commercial approach, and that only CSA was shortlisted because it was the only company that met ITI's threshold criteria.

DOC Position: During verification the Department was able to examine numerous ITI and NCB documents related to the bidding process. Nothing on the record indicates that the bidding process was not fair and open.

Comment 7: Petitioner contends that the sales projects in the revised business plan were unreasonable. Specifically, petitioner points out that CSA's sales projections were based on the performance of the market leader, Index Technologies. The sales history of this company, according to petitioner, is not an appropriate reference point because: (1) Index was the first or second in the marketplace with a very strong product; (2) Index, when it began, had links to a consulting firm which had substantial sales and marketing experience in the U.S. CASE market; and (3) a foreign-developed and supported software product had never previously been accepted on a large scale in the U.S. market and such a market entry was questionable given the market demands for technical support.

Respondents argue that the second set of sales projections were based upon several authoritative market studies, two fact-finding trips to the U.S., numerous meetings with potential users, and an analysis of various companies' sales and cost experiences (including Index Technology).

DOC Position: The Department closely examined the second set of sales projections made by CSA in its revised business plan. The values used for the total CASE market were well-supported. The Department has no hard data to determine that the specific market share and sales projected for POSE in CSA's revised business plan were unreasonable.

Comment 8: Petitioner argues that the free use of POSE by the government does not constitute a financial return to ITI from CSA and that no commercial organization seeking to maximize returns would enter into an agreement without reserving the rights to use their own product at no cost.

Respondents argue that since the free use of POSE was a part of the agreement between ITA and CSA, and since ITI quantified the value of free use, that value should be a part of any

assessment of the return on investment expected by ITI.

DOC Position: The Department considers the free use of POSE by the GOS to constitute a dilution of the distributorship rights provided CSA. Therefore, the free use of POSE, minus the royalty percentage which would have been paid ITI, was considered in our calculations to be part of the financial return to ITI.

Comment 9: Respondents argue that the Department's use of "best information available" in the preliminary determination was inappropriate. Respondents contend that because both the original proposal and the revised business plan were submitted prior to the preliminary determination, the Department was provided with all information requested.

DOC Position: The Department disagrees with respondents and believes that the use of best information available for the preliminary determination was justified. Prior to the preliminary determination, the Department issued three deficiency questionnaires. The third deficiency questionnaire was issued two weeks before the preliminary determination thereby providing respondents with one final opportunity to provide information repeatedly requested previously. In each of these questionnaires, we specifically asked for certain critical information necessary for our preliminary determination. Respondents either did not answer our questions or provided superficial answers which were of little use to the Department. Consequently, the Department was forced to use the best information available in its preliminary determination.

Comment 10: Respondents argue that the Department erred in its preliminary determination by using the prime rate plus a spread in the present value calculation. Respondents contend that the 12-month interbank rate plus a spread of ⅛ percent should be used in the present value calculation in the final determination.

DOC Position: The Department disagrees. The Department used in its calculations for this determination a commercial long-term interest rate (*i.e.*, the prime rate without any spread) in its calculations. This rate is the most appropriate measure on the record of this investigation of an average long-term commercial interest rate. No spread was added to the prime rate because statistical information on an average long-term rate was unavailable and because information obtained at verification indicated that long-term interest rates are both above and below the prime rate.

Comment 11: Petitioner argues that through the National Information Technology Plan, which is being implemented by NCB, the GOS has effectively targeted the computer and software industry with a number of export-oriented programs. Petitioner contends that the ITI development of POSE is an export program in accordance with the National Information Technology Plan.

Respondents argue that ITI is not an export promotion department of NCB. Respondents contend that it is the Industry Development Department (IDD) of NCB that has the export promotion function. Respondents further argue that the Department in its verification report erroneously links IDD with ITI to give the impression that ITI shares in the export promotion function of IDD. Furthermore, ITI did not impose an export requirement on CSA as a condition for receiving POSE, but that the need to export was mutually recognized as a prerequisite for ensuring commercial success.

DOC Position: Information on the record demonstrates that one objective of the National Information Technology Plan is the development of a strong export-oriented information technology industry. Furthermore, it is also clear from information on the record that it is ITI's intention to share its results in applied research with the local industry so that they can be commercialized into products for export.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. During verification we followed standard verification procedures including meeting with government and company officials, examining relevant documents and accounting records, tracing information in the responses to source documents, accounting ledgers and financial statements, and collecting additional information that we deemed necessary for making our final determination. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to terminate suspension of liquidation on all entries of CASE software from Singapore and cancel the continuous entry bond which covered the lump sum equivalent of the estimated net bounty or grant calculated in the preliminary determination.

ITC Notification

Since Singapore is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise under investigation is dutiable, section 303 of the Act applies to this investigation. Therefore, the ITC is not required to be notified.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: March 26, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-7448 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

U.S. Participation in International Standards Activities; Opportunity for Interested Parties To Comment for the Record

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: On November 27, 1989, the National Institute of Standards and Technology announced a meeting to gather information, insights, and comments related to U.S. participation in international standards-related activities and to possible government actions. (See **Federal Register**, Vol. 54, No. 226, November 27, 1989, page 48795.) Due to the large number of requests to make presentations, the National Institute of Standards and Technology announces that the meeting will be extended from one day, April 3, 1990, to three days, April 3, 4 and 5, 1990. The record of the meeting will be held open for sixty days following the meeting to allow all interested parties the opportunity to comment. Comments must be received by close of business June 5, 1990.

DATES: The meeting will be held on three days, April 3, from 9:30 a.m. to 5 p.m., and April 4 and 5, from 9 a.m. to 5 p.m..

FOR FURTHER INFORMATION CONTACT: The written comments received regarding the April 3–5, 1990, hearing on U.S. Participation in International Standards activities will be on file after April 5, 1990, in the U.S. Department of Commerce Central Reference and Records Inspection Facility, Room 6628, Hoover Building, Washington, DC 20230,

(202/377–3271), for the individual's perusal or copying. Copies of the text of the hearing can be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703/487–4650); a copy of this text will also be made available in the same DOC Reference and Records Inspection facility after April 25, 1990. Additional written comments should be sent to Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administration Building, Room A–600, Gaithersburg, MD 20899, (301/975–4000).

ADDRESSES: The meeting will be held in the Auditorium at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: March 28, 1990.

John W. Lyons,

Director.

[FR Doc. 90–7492 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–40–M

National Oceanic and Atmospheric Administration

Conservation Plan for Northern Fur Seals

AGENCY: National Marine Fisheries Services, NOAA, Commerce.

ACTION: Notice of availability and request for comments.

SUMMARY: The National Marine Fisheries Service has completed "A Conservation Plan for Northern Fur Seals, *Callorhinus ursinus*", as required by section 115(b) of the Marine Mammal Protection Act, and is requesting public comments.

DATES: Comments must be submitted on or before May 2, 1990.

ADDRESSES: Written requests for copies and comments on the Conservation Plan should be mailed to Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 301–427–2289.

Dated: March 27, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90–7501 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals NMFS, Southwest Fisheries Center (P77# 33); Modification No. 2 to Permit No. 680

Notice is hereby given that pursuant to the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 part 216) and § 220.24 of the regulations on endangered species (50 CFR parts 217–222), Scientific Research Permit No. 680 issued to the NMFS, Southwest Fisheries Center P.O. Box 271, La Jolla, California on August 16, 1989 (54 FR 35221), as modified on December 18, 1989 (54 FR 52975), is further modified as follows:

The following species are added to Section A.1:

Species	Maximum total take
Blainville's beaked whale (*Mesoplodon densirostris*)	240
Hubbs' beaked whale (*Mesoplodon carlhubbsi*)	240
Gray's beaked whale (*Mesoplodon grayi*)	240
Peruvian beaked whale (*Mesoplodon peruvianos*)	240
Unidentified beaked whales (*Mesoplodon* sp.)	240
Bottlenose whale (*Hyperoodon* sp.)	240
Baird's beaked whale (*Berardius bairdii*)	240
Cuvier's beaked whale (*Ziphius cavirostris*)	240
Dwarf sperm whale (*Kogia simus*)	240
Sperm whale (*Physeter macrocephalus*)	240
Pygmy sperm whale (*Kogia breviceps*)	240
Minke whale (*Balaenoptera acutorostrata*)	240
Bryde's whale (*Balaenoptera edeni*)	240
Blue whale (*Balaenoptera musculus*)	240
Fin whale (*Balaenoptera physalus*)	240
Sei whale (*Balaenoptera borealis*)	240
Humpback whale (*Megaptera novaeangliae*)	240

Section B.1 is replaced by:

1. This research effort shall be conducted by the means, in the areas and for the purposes set forth in the application and the modification request.

Section B.2 is replaced by:

2. If one endangered animal is killed or two nonendangered animals are killed as a result of the biopsy procedure, or if usable samples are not obtained from at least 75 percent of the animals darted, the Holder shall suspend his research and the experimental protocol shall be reviewed and, if necessary revised to the satisfaction of the Service, in consultation with the Commission.

Issuance of this modification, as required by the Endangered Species Act of 1973, is based on the finding that such modification: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the modification; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This modification was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Services regulations governing endangered spcies permits.

This modification becomes effective upon publication in the **Federal Register.**

Documents in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Services, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196).

Dated: March 27, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90–7502 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permt to Mr. Mats Amundin (P460)

On February 16, 1990, notice was published in the **Federal Register** (55 FR 5644) that an application had been filed by Mr. Mats Amundin, Zoologist, Kolmarden Zoo, 618 00 Kolmarden, Sweden, for a permit to export one (1) baby sperm whale (*Physeter catodon*), including all soft tissues for scientific purposes.

Notice is hereby given that on March 23, 1990 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the regulations governing endangered fish and wildlife permits (50 CFR parts 217–222), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit, (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act. This Permit is issued in accordance with and is subject to parts 220 through 222 of title 50 CFR,

the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Serivce, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910, (301/427–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702, (813/893–3141).

Dated: March 23, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90–7503 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals: Issuance of Permit; Dr. Daniel Costa, University of California, Santa Cruz (P227H)

On January 18, 1990, notice was published in the **Federal Register** (55 FR 1703) that an application had been filed by Dr. Daniel Costa, University of California, Institute of Marine Sciences, 100 Shaffer Road, Santa Cruz, CA 95060, for a scientific research permit to import blood, milk, and miscellaneous tissue samples collected from pinnipeds in Australia, New Zealand, Mexico, Argentina, Ecuador, and Chile.

Notice is hereby given that on March 23, 1990, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit is based on a finding that the proposed taking is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit is available for review by appointment in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, Maryland 20910 (301–427–2289); and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731 (213–514–6196).

Dated: March 23, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90–7415 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: April 2, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and the Federative Republic of Brazil establishes limits for the new agreement year which begins on April 1, 1990 and extends through March 31, 1991. The limits for Categories 300/301, 338/339/638/639, 347/348, 350, 369–D and 607 include adjustments for carryforward used during the previous agreement year.

A copy of the agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of the section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding Internrational Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 15 and 19, 1988 between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 2, 1990, entry into the United States for consumption with withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Federative Republic of Brazil and exported during the twelve-month period which begins on April 1, 1990 and extends through March 31, 1991, in excess of the following levels of restraint:

Category	12-month restraint limit
200–239, 300–369, 400–469 and 600–670, as a group.	305,353,712 square meters equivalent.
Sublevels in the group:	
218	3,757,891 square meters.
219	12,213,145 square meters.
225	6,576,309 square meters.
300/301	4,808,079 kilograms.
313	34,572,595 square meters.
314	5,167,100 square meters.
315	15,501,300 square meters.
317/326	14,092,091 square meters.
334/335	101,124 dozen.
336	56,180 dozen.
338/339/638/639	954,000 dozen.
342/642	297,754 dozen.
347/348	689,000 dozen.
350	90,100 dozen.
361	764,048 numbers.
363	18,202,320 numbers.
369–D [1]	343,591 kilograms.
410/624	7,515,782 square meters of which not more than 2,473,507 square meters shall be in category 410.

Category	12-month restraint limit
433	17,170 dozen.
445/446	67,264 dozen.
604	356,759 kilograms of which not more than 272,666 kilograms shall be in category 604-A [2].
607	3,125,252 kilograms.
647/648	337,080 dozen.
699-P [3]	1,214,018 kilograms.

[1] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.
[2] Category 604-A: only HTS number 5509.32.0000.
[3] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

Imports charged to these category limits for the period April 1, 1989 through March 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil.

The conversion factor for Categories 338/339/638/639 is 10 square meters per dozen.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-7442 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting certain limits.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits and sublimit, refer to the Quota Status Reports on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 347/348/647/648 and sublimit for Categories 347/348 are being increased for swing, while decreasing the limit for Categories 342/642.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 23246, published on May 31, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 24, 1989. That directive concerns imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and export during the twelve-month period which began on June 1, 1989 and extends through May 31, 1990.

Effective on April 3, 1990, the directive of May 24, 1989 is being amended to adjust the following limits, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted 12-mo. limit
347/348/647/648	1,111,940 dozen of which not more than 793,940 dozen shall be in categories 347/348.
342/642	293,620 dozen.

[1] The limit and sublimit have not been adjusted to account for any imports exported after May 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-7445 Filed 3-30-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the German Democratic Republic

March 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the German Democratic Republic have agreed, effected by exchange of notes dated December 8, 1989 and February 23, 1990, to extend their current bilateral textile agreement through December 31, 1990. The U.S. Government will control imports during the period January 1, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton Textile Agreement, effected by exchange of notes dated December 10, 1986 and February 27, 1987, as amended and extended, between the Governments of the United States and the German Democratic Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on April 3, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 334, produced or manufactured in the German Democratic Republic and exported during the twelve-month period beginning on January 1, 1990 and extending through December 3, 1990, in excess of 19,500 dozen.[1]

Imports charged to the category limit for the period January 1, 1989 through December 31, 1989 shall be charged against the level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The restraint limit set forth above is subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and the German Democratic Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–7443 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–DR–M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

March 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and Hong Kong is being amended to include the coverage of Categories 218/225/317/326.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 48 FR 2400, published on January 19, 1983, and 51 FR 27235, published on July 30, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on July 25, 1986, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong, for which the Government of Hong Kong has not issued an appropriate visa.

Effective on April 3, 1990, the directive of January 14, 1983, as amended, is amended further to include cotton and man-made fiber textile products in merged Categories 218/225/317/326, produced or manufactured in Hong Kong and exported from Hong Kong on and after January 1, 1990. You are directed to premit entry of merchandise in Categories 218, 225, 317 and 326 visaed as merged Categories 218/225/317/326 or the correct category corresponding with the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa or visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–7444 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Poland

March 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 433 is being reduced for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 1604, published on January 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of

the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of January 10, 1990 from the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on April 3, 1990, you are directed to reduce to 7,751 dozen [1] the current limit for wool textile products in Category 433, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the Polish People's Republic.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–7441 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

March 27, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 3, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information embargoes and quota re-openings, call (202) 377–3715.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1989.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 369–S and sublimits for Categories 338–S/339–S and 341-Y are being adjusted to recredit carryforward applied but not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27666, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 27, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 23, 1989, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on April 3, 1990, the directive of June 23, 1989 is being amended further to adjust the limits for cotton textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Turkey:

Category	Adjusted 12 mo. Limit [1]
338/339	1,378,000 dozen of which not more than 1,032,122 dozen shall be in categories 338–S/339–S [2]
341	552,720 dozen of which not more than 204,477 dozen shall be in category 341–Y [3].
369–S [4]	809,101 kilograms.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[3] Category 341–Y: Only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[4] Catgegory 369–S: Only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–7446 Filed 3–30–90; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Advisory Committee on CFTC–State Cooperation; Seventh Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the Commission's "Advisory Committee on CFTC-State Cooperation." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 14(a)(2)(A), and 41 CFR 101–6.1007 and 101.6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, as amended.

The objectives and scope of activities of the Advisory Committee on CFTC-State Cooperation are to conduct public meetings and submit reports and recommendations on matters of joint concern to the states and the Commission arising under the Commodity Exchange Act regarding regulation of commodity transactions and related activities.

Commissioner Fowler C. West serves as Chairman and Designated Federal Official of the Advisory Committee on CFTC-State Cooperation. State officials who have had experience in the commodities and consumer protection fields; the former United States Attorney for the Northern District of Illinois; and representatives of the industry's only registered futures association, an industry trade association and a private

brokerage firm, serve as advisory committee members.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC this 27th day of March, 1990 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-7439 Filed 3-30-90; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 90-C0009]

Consumer Direct, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Consumer Direct, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 17, 1990.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

Dated: March 27, 1990.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Consumer Direct, Inc. a corporation (hereinafter, "Consumer Direct"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, within a hearing or determination of issues of law and fact.

2. The provisions of this Agreement and Order shall apply to Consumer Direct and to each of its successors and assigns.

I. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter "Commission"), an independent regulatory Commission of the United States of America, created pursuant to section 4 of the Consumer Product Safety Act (CPSA), as amended 15 U.S.C. 2053.

4. Consumer Direct is a corporation organized and existing under the laws of the State of Ohio, with its principal corporate offices located at 1375 Raff Road, SW., Canton, Ohio.

5. Consumer Direct has distributed a certain spring tension exercise device known as the "Gut Buster" (hereinafter, "Gut Buster"), (a) for sale to consumers for use in or around a permanent or temporary household or residence, in recreation or otherwise or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. The Gut Buster is a "consumer product" within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2052(a)(1).

6. Consumer Direct distributed and sold the Gut Buster directly to consumers throughout the United States. Consumer Direct, therefore, is a "distributor" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (5) and (11) of the CPSA 15 U.S.C. 2052(a)(1), (5) and (11).

II. The Product

7. Consumer Direct distributed and sold approximately two million (2,000,000) Gut Busters from September 1986 through September 1987. The Gut Buster is an "exercise" device consisting of molded plastic handle bars, a pair of stirrups, and a coil spring joining the handle bar section to the stirrups. Extension of the spring is intended to be limited by a nylon cord located inside the spring mechanism.

III. Staff Allegations of a Defect in the Design and Manufacture of the Gut Buster and of the Failure by Consumer Direct to Comply With the Reporting Requirements of Section 15(b) of the CPSA

8. Consumer Direct began selling the Gut Buster to consumers by direct mail in September 1986 and, by January 1987 the firm began receiving reports of injuries to Gut Buster purchasers due to spring breakage.

9. Injuries due to spring breakage were reported through the spring and summer months of 1987. By approximately December 1987, 157 customers had made claims for personal injury from broken springs and Consumer Direct also had received 571 consumer complaints alleging personal injury due to spring breakage. The complaints and claims included allegations that the staff considers to be of serious injury to the leg, groin, genitals, face and teeth.

10. In the fall of 1987, Consumer Direct mailed to all known purchasers of the Gut Buster revised instructions directing the users, among other things, not to let the device slip off their feet, not to bend their arms while using the device, and in addition not to extend the spring more than 30 inches.

11. The Commission Staff believes that Consumer Direct had received sufficient information no later than January 1987, to reasonably support the conclusion that the Gut Buster contained defects which could create a substantial product hazard. The company did not report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

IV. Response of Consumer Direct

12. Consumer Direct denies that its Gut Buster contains any defect which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies any obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the Gut Buster. In any event, the Company's position is that it reported the information in December 1987.

V. Agreement of the Parties

13. Consumer Direct and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement Order.

14. Consumer Direct agrees to pay the Commission a civil penalty in the amount of $130,000.00 within 30 days of final acceptance of this Settlement Agreement by the Commission and service of the Commission's Order on Consumer Direct. This payment is made in settlement of allegations by the staff that Consumer Direct violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to Gut Busters distributed and

sold by Consumer Direct between 1986 and 1987. The parties agree that this settlement does not constitute any admission of liability on behalf of Consumer Direct nor an agreement by Consumer Direct that the staff's allegations are accurate or factually correct.

15. Upon final acceptance of this Settlement Agreement by the Commission, Consumer Direct knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

16. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 15 CFR 1118.20(e). If the Commission does not receive any written objections within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

17. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint has been issued. The parties agree that a press release shall be issued within two weeks of the final acceptance of this Settlement Agreement by the Commission, limited solely to the Settlement Agreement and the information contained in the Press Release of November 29, 1988, regarding the Gut Buster.

18. This Settlement Agreement is binding upon the Commission and Consumer Direct and, with the exception of Consumer Direct's successors and assigns, does not bind or limit others not party to this Settlement Agreement. In accepting this Agreement, however, the Commission knowingly and expressly waives any right it might have had to seek a civil penalty from Fitness Quest, Inc., an Ohio corporation with its principal place of business at 1375 Raff Road SW., Canton, Ohio, with respect to any involvement it may have had in the sale of the Gut Buster.

19. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Consumer Direct to appropriate legal action.

19. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Consumer Direct, Inc.

Richard A. Suarez,

President, Consumer Direct, Inc.

Consented to on behalf of the CPSC staff by:

William J. Moore, Jr.,

Trial Attorney, Division of Administrative Litigation, Directorate for Compliance and Administrative Litigation.

Dated: January 11, 1990.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, that Consumer Direct, Inc. shall pay, within 30 days of final acceptance of this Settlement Agreement and service of this order, a civil penalty in the sum of $130,000.00 to the Consumer Product Safety Commission.

Provisionally accepted on the 27th day of March 1989.

By order of the Commission.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

Accepted and Final Order issued on the _____ day of _____, 1989.

By Order of the Commission.

[FR Doc. 90-7475 Filed 3-30-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 1, 1990; Tuesday, May 8, 1990; Tuesday, May 15, 1990; Tuesday, May 22, 1990; and Tuesday, May 29, 1990 at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commerical or financial information obtained from a person and priviledged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC. 20301.

Dated: March 27, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-7423 Filed 3-30-90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Energy Task Force will meet 27 April 1990 from 9 a.m. to 5 p.m., at 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of

discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Lelia V. Carnevale, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, Phone (703) 756–1205.

Dated: March 23, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–7437 Filed 3–30–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of the Secretary

Interim Report on National Energy Strategy: A Compilation of Public Comments; Availability and Request for Comments

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of availability of the interim report on the development of a National Energy Strategy for the general public review and comment.

SUMMARY: The Department of Energy will issue an Interim Report on April 2, 1990, on the development of a National Energy Strategy. The Interim Report is not an interim strategy, nor is it a first draft of a strategy. It is a report on the completion of the first phase of the development of a strategy, which focused on gathering information. A final report on the National Energy Strategy is expected to be submitted to the President in December 1990.

The Interim Report conveys the results of a series of 15 public hearings held throughout the country on the development of a National Energy Strategy and of the Department's solicitations of written submissions on related topics. The Report's contents are organized into four general subject areas concerning: (1) Efficiency in energy use, (2) the various forms of energy supply, (3) energy and the environment, and (4) the underlying foundations of science, education, and technology transfer. Each of these, in turn is subdivided into sections addressing specific topics—such as (in the case of energy efficiency) energy use in the transportation, residential, commercial, and industrial sectors, respectively. Within each of these sections, the hearing record is organized around a series of Publicly Identified Goals. These are followed by Publicly Identified Obstacles to achieving the Goals, and Publicly Identifed Options that were suggested for overcoming the Obstacles. The Department has added some factual information to the compilation of the public hearing record for the purposes of context and perspective, but no commentary or conclusions. The public hearing record on the National Energy Strategy as summarized in the Interim Report will serve as a basis for further public discussion and analysis.

The Department invites comment on the Interim Report, specifically on: (1) The extent to which this Report surrounds the issues, (2) the adequacy of the stated goals and identified obstacles, and (3) the completeness of the range of options.

DATES: The comment period will begin on April 2, 1990, and extends through July 2, 1990.

ADDRESSES: Persons requiring a copy of the Report, while supplies last, may write to: U.S. Department of Energy, Public Inquiries, room 1E–206, Mail Stop: PA–5, 1000 Independence Avenue, SW., Washington, DC 20585, or call (202) 586–6540. Persons needing more than one copy of the report may acquire them from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161

Written comments should be addressed to the Deputy Under Secretary for Policy, Planning, and Analysis, Attention: National Energy Strategy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Transcripts of the oral testimony and question and answer sessions, as well as prepared statements submitted for the record and all other written submissions, form the basis for this Interim Report. All documents are available for inspection as they become available to the Department of Energy, at the Department of Energy's 14 Public Reading Rooms in the following locations: U.S. Department of Energy, 1000 Independence Avenue, SW., room 1E–190, Washington, DC 20585; Albuquerque Operations Office, U.S. Department of Energy, National Atomic Museum, Building 20358, Kirtland Air Force Base, Wyoming Boulevard, Albuquerque, NM 87115; Bartlesville Project Office/National Institute for Petroleum and Energy Research (NIPER) Library, U.S. Department of Energy, 220 North Virginia Avenue, Bartlesville, OK 74003; Boston Support Office, U.S. Department of Energy, 10 Causeway Street, room 1197, Boston, MA 02222–1035; Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439; Idaho Operations Office, U.S. Department of Energy, 1776 Science Center Drive, Idaho Falls, ID 83402; Morgantown Energy Technololgy Center, U.S. Department of Energy, Library, 3610 Collins Ferry Road, Morgantown, WV 26507–0880; Nevada Operations Office, U.S. Department of Energy, 2753 South Highland Drive, Las Vegas, NV 89193–8518; Oak Ridge Operations Office, U.S. Department of Energy, Office of Chief Counsel, 200 Administration Road, Oak Ridge, TN 37831–8510; Pittsburgh Energy Technology Center, U.S. Department of Energy, Cochran Mill Road, Building 95, Pittsburgh, PA 15236–0940; Richland Operations Office, U.S. Department of Energy, 825 Jadwin Avenue, Richland, WA 99352; San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, CA 94612; Savannah River Operations Office, U.S. Department of Energy, Gregg-Granite Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, SC 29801; Southeastern Power Administration, U.S. Department of Energy, Legal Library, Samuel Elbert Building, Public Square, Elberton, GA 30635.

FOR FURTHER INFORMATION CONTACT: William H. Hatch, Office of Policy, Planning and Analysis, (202) 586–4767, or John H. Carter, Chief, Freedom of Information and Privacy Acts, (202) 586–5955, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Linda G. Stuntz,

Deputy Under Secretary, Policy, Planning and Analysis.

[FR Doc. 90–7557 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the BCR National Laboratory

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited application for a grant award.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center, announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a grant based on an unsolicited

application submitted by BCR National Laboratory Corporation for "Coal Desulfurization in a Rotary Kiln Combustor."

SCOPE: The objectives of this grant are: (1) To provide the feasibility of burning high-sulfur bituminous coal and anthracite refuse, in a rotary kiln, with limestone injection for sulfur dioxide emissions control and (2) to determine the emissions level of SO_x and NO_x and specifically to identify the Ca/S ratios that are required to meet New Source Performance Standards.

This project will examine the physical arrangement and operation of a rotary combustor firing wastes and high-sulfur coal with limestone injection, collect data on thermal and chemical performance, analyze that data for consistency and comparison with other in-bed capture techniques and evaluate the economics of the process.

Among in-bed sulfur capture techniques, limestone injection into a rotary combustor offers a simple and readily adaptable procedure.

In accordance with 10 CFR 600.14 (D) and (E), BCR National Laboratory has been selected as the grant recipient. DOE support of the activity would enhance the public benefits to be derived by providing environmentally acceptable means of combusting coal wastes and high-sulfur coal. This activity represents an unique idea and a method which would not be eligible for financial assistance under a recent, current or planned solicitation. Furthermore, DOE has determined that a competitive solicitation would be inappropriate.

The term of the grant is for an eighteen (18) month period at an estimated value of $326,084. The DOE share is anticipated at $78,000, the remainder, or $248,084 to be nonfederal moneys.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Norey B. Laug, Telephone: AC (412) 892–4827.

Dated: March 14, 1990.

Carroll A. Lambton,

Deputy Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 90–7482 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Grant to the Consortium For Fossil Fuel Liquefaction Science

AGENCY: U.S. Department of Energy.

ACTION: Intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b)(2), it intends to make a noncompetitive financial assistance (cooperative agreement) award to the Consortium for Fossil Fuel Liquefaction Science. This action is supported by a 1/16/90 Determination of Noncompetitive Financial Assistance citing 10 CFR 600.7(b)(2)(i) criteria (A) and (D). The title of this assistance is "Cooperative Research in Coal Liquefaction."

SCOPE: This financial assistance award is intended to support long-term, integrated research on subjects of interest in coal liquefaction. The major emphasis of this award will be research on iron and iron compounds as catalysts for coal liquefaction. Additional areas of research will be in the areas of exploratory research on coal liquefaction, novel coal liquefaction concepts and novel catalysts for coal liquefaction.

This noncompetitive financial assistance is justified as a logical extension of the research the Consortium began under prior cooperative agreements. Competition would have a significant adverse effect on the continuity of the research. Furthermore, the consortium is uniquely qualified and situated to conduct the research so as to satisfy the needs of DOE's Fossil Fuel Energy Program.

The term of the cooperative agreement is a three year period at a total estimated cost of $9,000,000 of which the DOE share is $4,500,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: David L. Hunter, Telephone: (412) 892–4872.

Dated: March 14, 1990.

Carroll A. Lambton,

Contracting Officer.

[FR Doc. 90–7483 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the University of Wisconsin, Madison, WI, in the amount of $173,000, for "Research on Solar Heating and Cooling". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7 (b)(2)(i), DOE/SAN has determined that eligibility for this grant award shall be limited to the University of Wisconsin under criterion (A), continuation of an existing DOE grant.

Grant No. DE–FG03–90SF18498.

SCOPE OF PROJECT: The University of Wisconsin proposes to perform research on solar heating and cooling systems in the following areas:

Radiation and Related Meteorological Data: Data Processing

The grantee shall conduct research on radiation and related meteorological data, including continuing development of a weather generator and consideration and evaluation of improvements in computational methods for processing solar insulation data.

Generic Systems

The grantee will work closely with CSU, SERI, and SRCC (Solar Research Coordinating Council) to develop a systems testing and rating procedure based upon the concept of "generic systems".

Solar Process Component and Systems Research

The grantee shall conduct studies of solar process components and systems, such as stratified tanks, immersed heat exchangers, DHW systems, and seasonal storage heating systems, to improve predicative capabilities of simulation and design methods.

Desiccant Cooling Processes and System Research

The grantee shall conduct research on solid desiccant materials and geometries, and on liquid desiccant materials and system configurations, to develop models of components and systems.

Program Support and Services

The grantee shall continue to develop and support TRNSYS and FCHART, and support DOE by participation in program reviews and advisor meetings.

This research is expected to directly support other industrial research and will result in optimized analytical designs, design tools and direct assistance by University of Wisconsin staff to the engineering development of

commercial designs. The University of Wisconsin currently conducts research under DE–FG03–85SF15303. The proposed effort is a continuation of this grant.

FOR FURTHER INFORMATION CONTACT: Sadie Kiel, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, March 5, 1990.

Aundra Richards,

Acting Director, Contracts Management Division.

[FR Doc. 90–7484 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Wednesday, April 25, 1990, 8 a.m. to 5:30 p.m.

Place: Solar Energy Research Institute, Denver West Office Park, 1617 Cole Boulevard, Building 17, 4th Floor Conference Room A, Golden, Colorado 80401.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S–2, 1000 Independence Ave., SW, Washington, DC 20585, 202/586–1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

April 25, 1990

8 a.m. Chairman F. Ahearne Opens Meeting, Subcommittee Reports, Rocky Flats Plant: Resumption of Operations Plan.
Noon. Lunch.
1 p.m. Resumption of Operations Plan, Selected Technical Issues, Committee Business.
5:30 p.m. Meeting Adjourned until 8 p.m.
8 p.m. Public Comment Period Begins.
10 p.m. Public Comment Period Ends.

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 27, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90–7485 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–263–000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Company

[Docket No. ER90–263–000]

March 23, 1990.

Take notice that on March 19, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative, Inc. (Seminole) of 150 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Seminole, designated as Tampa Electric Rate Schedule FERC No. 22.

Tampa Electric proposes an effective date of March 14, 1990 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: April 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas City Power & Light Company

[Docket No. ES90–30–000]

March 22, 1990.

Take notice that on March 19, 1990, Kansas City Power & Light Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to Section 204 of the Federal Power Act to issue from time to time up to $750 million aggregate amount of short-term debt instruments with maturities no later than June 30, 1993.

Comment date: April 18, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Public Service Company of Indiana, Inc.

[Docket No. ER90–267–000]

March 23, 1990.

Take notice that Public Service Company of Indiana, Inc. on March 20, 1990 tendered for filing pursuant to the Interconnection Agreement, dated March 9, 1971 as amended, by and between the United States of America, Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company, and Public Service Company of Indiana, Inc. an Eighth Supplemental Agreement to become effective July 1, 1990, pursuant to Part 35.2 of the Commission's Regulations.

Said filing amends the Agreement by adding Henry County Rural Electric Membership Corporation to the list of Hoosier members, increasing said Hoosier members from 18 to 19 in accordance with the Indiana Utility Regulatory Commission order in Cause No. 38780, dated August 16, 1989.

Copies of the filing were served on Southern Indiana Gas and Electric Company, Hoosier Energy Rural Electric Cooperative, Inc., Henry County Rural Electric Membership Corporation, and the Indiana Utility Regulatory Commission.

Comment date: April 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER90–264–000]

March 23, 1990.

Take notice that Entergy Services, Inc. (Entergy Services), acting as agent for Arkansas Power & Light Company (AP&L), Louisiana Power & Light Company (LP&L), Mississippi Power & Light Company (MP&L), and New Orleans Public Service Inc. (NOPSI), collectively the Middle South Electric System, on March 20, 1990, tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) approving the

Middle South Electric System's application for membership in the WSPP.

Entergy Services requests an effective date of October 1, 1989. Entergy Services requests waiver of the Commission's notice requirements under Section 35.11 of the Commission's Regulations.

Comment date: April 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Edison Company

[Docket No. ER90-260-000]

March 23, 1990.

Take notice that on March 2, 1990, Ohio Edison Company filed notice that it is changing its billing, effective January 1, 1990, for sales to AMP-Ohio to reflect deletion of the Ohio gross receipts tax from the bills from AMP-Ohio, due to the fact that AMP-Ohio is responsible for payment of this tax effective January 1, 1990.

Comment date: April 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Barry L. Williams

[Docket No. ID-2449-000]

March 23, 1990.

Take notice that on March 20, 1990, Barry L. Williams, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director Pacific Gas and Electric Company

Trustee The Northwestern Mutual Life Insurance Company

Comment date: April 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Company

[Docket No. ER90-265-000]

March 23, 1990.

Take notice that Florida Power & Light Company (FPL), on March 19, 1990, tendered for filing Amendment Number Three to Short Term Agreement To Provide Power and Energy By Florida Power & Light Company To Utility Board of the City of Key West, Florida. Cost Support Schedules C, D, E, F, and G (together with Cost Support Schedule F Supplements which support the rates for sales under Amendment Number Three To Short Term Agreement are the same cost support schedules which were filed with the Commission on May 2, 1988 in FERC Docket No. ER88-378-000.

FPL states that under Amendment Number Three, FPL and Utility Board of the City of Key West have agreed to extend the term of the Short Term Agreement through May 29, 1993 and revise certain minimum and maximum demand commitments for service to be provided by FPL.

FPL respectfully requests that the proposed Amendment be made effective immediately.

Copies of the filing were served upon the Utility Board of the City of Key West, Florida and the Florida Public Service Commission.

Comment date: April 6, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Power Company

[Docket No. ER90-266-000]

March 23, 1990.

Take notice that Duke Power Company (Duke or Company) on March 20, 1990 tendered for filing three Settlement Agreements and one Amendment to each of its Interconnection Agreements between the Company and North Carolina Municipal Power Agency Number 1 (Power Agency); North Carolina Electric Membership Corporation (NCEMC), Saluda River Electric Cooperative, Inc. (Saluda River) and Piedmont Municipal Power Agency (PMPA). Duke, Power Agency, NCEMC, Saluda River and PMPA are joint owners of the Catawba Nuclear Station. Under the terms of the Interconnection Agreements, Duke interconnects its generation and transmission system with the Catawba Nuclear Station, wheels electric power and energy to the members of the other owners, provides supplemental capacity and energy in excess of that provided by the owners' ownership interests and provides back-up services. Duke states that the Settlement Agreements and Amendments clarify how certain calculations will be made under the Interconnection Agreements and resolve certain items of dispute.

Duke states that the Interconnection Agreements are on file with the Commission and have been designated as follows:

Rate Schedule FERC No. 271 (Power Agency)
Rate Schedule FERC No. 273 (NCEMC)
Rate Schedule FERC No. 274 (Saluda River)
Rate Schedule FERC No. 276 (PMPA)

Copies of this filing were mailed to Power Agency, NCEMC, Saluda River, PMPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: April 6, 1990, in accordance with Standard Paragraph E at the end of this notice

9. Middletown LFG, Ltd.

[Docket No. QF87-63-003]

March 23, 1990.

On March 20, 1990, Middletown LFG, Ltd. (Applicant), of 15508 Wright Brothers Drive, Addison, Texas 75244, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Goshen, New York. The primary energy source will be biomass in the form of methane gas, recovered from sanitary landfills. Natural gas, oil or coal will not be used at this facility.

The certification of the original application was issued on April 17, 1987 (39 FERC ¶62,060). The first recertification was issued on December 15, 1987 (41 FERC ¶62,247). The current recertification is requested due to the change in ownership from Wehran Energy Corporation to Middletown LFG, Ltd., and an increase in capacity from 5 megawatts to 9.5 megawatts. All other facility characteristics remain the same as that set forth in the original application.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7418 Filed 3-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI90-76-000, et al.]

Kern River Gas Supply Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Kern River Gas Supply Corporation

[Docket No. CI90-76-000]

March 22, 1990.

Take notice that on March 21, 1990, Kern River Gas Supply Corporation (KRGS) of 1010 Milam Street, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited term blanket certificate with pregranted abandonment to authorize sales for resale in interstate commerce of Canadian-produced natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: April 2, 1990, in accordance with Standard Paragraph J at the end of this notice.

2. Petro-Canada Hydrocarbons, Inc.

[Docket No. CI90-77-000]

March 22, 1990.

Take notice that on March 21, 1990, Petro-Canada Hydrocarbons, Inc. (PHC) of 150 Sixth Avenue, SW., Calgary, Alberta, Canada, T2P 3E3, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited term blanket certificate with pregranted abandonment to authorize sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction including Canadian-produced natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: April 2, 1990 in accordance with Standard Paragraph J at the end of the notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP90-992-000]

March 22, 1990.

Take notice that on March 15, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-992-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Stand Energy Corporation (Shipper) under the blanket certificate issued in Docket No. CP86-240-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states it proposes to transport up to 3,500 MMBtu of natural gas for Shipper on a peak day, 2,800 MMBtu on an average day and 1,277,500 MMBtu, annually under ITS Rate Schedule. This service was reported to the Commission in Docket No. ST90-2062-000. Columbia further states that construction of facilities will be required to provide the proposed service.

Comment date: May 7, 1990, in accordance with standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP90-920-000]

March 22, 1990.

Take notice that on March 6, 1990, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Regulations under the Natural Gas Act (18 CFR 157), for a certificate of public convenience and necessity authorizing the construction and operation of two pipeline segments in Erie and Niagara counties, in the State of New York, and the firm transportation of 267.5 MMcf per day made possible by the proposed facilities. Specifically, National proposes to transport, on a firm basis, 228.7 MMcf per day for Empire State Pipeline Company (Empire) or its shippers, 15.0 MMcf per day for EDC Four, Inc., 7.5 MMcf per day for Indeck Energy Services of Ilion, Inc., and 16.3 MMcf per day on behalf of Indeck Energy Services of Corinth, Inc.

National submits that its proposal constitutes an economically and environmentally superior alternative to the construction of the first 32.75 miles of the Empire State Pipeline proposed by Empire in a proceeding before the Public Service Commission of the State of New York. National proposes to construct and operate 5.0 miles of 24-inch diameter pipeline (to be known as Line XM-6) connecting facilities proposed by TransCanada Pipelines, Ltd. to National proposed Line XM-5 on Grand Island, New York, and 7.5 miles of 24-inch diameter pipeline connecting its Line X in Clarence, New York, to a proposed point of interconnection with Empire's facilities at Royalton, New York. National's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection. The estimated cost of the facilities is $9,550,000. National will finance the cost of the proposed construction from funds on hand or to be obtained from its parent company, National Fuel Gas Company.

Comment date: April 12, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation

[Docket No. CP90-1012-000]

March 22, 1990.

Take notice that on March 20, 1990, Texas Eastern Transmission Corporation (Tetco), P.O. Box 2521, Houston, Texas 77252-2521, filed in Docket No. CP90-1012-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Diamond Shamrock Offshore Partners Limited Partnership (Diamond Shamrock), a producer, under Tetco's blanket certificate issued in Docket No. CP88-136-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tetco states that pursuant to a service agreement dated January 1, 1990, it proposes to transport up to 82,200 million Btu per day for Diamond Shamrock. Tetco indicates that it would receive the gas from existing points on its system located onshore and offshore Louisiana, Texas, and Mississippi and redeliver the gas, less shrinkage, to existing delivery points on its system onshore and offshore Louisiana. Tetco estimates that the peak day and average day volumes would be 82,200 million Btu and that the annual volumes would be 30,003,000 million Btu. It is stated that on February 12, 1990, Tetco initiated a 120-day transportation service for Diamond Shamrock under § 284.223(a), as reported in Docket No. ST90-2237-000.

Tetco further states that no facilities need be constructed to implement the service. Tetco indicates that the primary term of the agreement expires on November 1, 1990, but that the service would continue on a month-to-month basis until terminated. Tetco proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT-1.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP90–943–000]

March 22, 1990.

Take notice that on March 8, 1990, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–943–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Amoco Production Company (Amoco), under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that pursuant to a transportation service agreement dated July 21, 1988, as amended on January 17, 1990, it proposes to transport up to 32,000 Mcf per day for Amoco. United states that it would receive the gas at specified points located in Louisiana and redeliver the gas at specified points on its system in Mississippi, Alabama, Florida, and Louisiana. United estimates that the maximum day and average day volumes would be 312,090 million Btu, and that the annual volumes would be 113,912,850 million Btu. It is stated that on February 6, 1990, United initiated a 120-day transportation service for Amoco under § 284.223(a), as reported in Docket No. ST90–1963–000.

United further states that no facilities need be constructed to implement the service. It is stated that the service would continue om a month-to-month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP87–190–009]

March 22, 1990.

Take notice that on March 15, 1990, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87–190–009 a petition to amend the certificate issued in Docket No. CP87–190–000, as amended in Docket Nos. CP87–190–005 and CP87–190–007, to extend the authorized term to expire on September 30, 1999, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 30, 1987, in Docket No. CP87–190–000, 39 FERC ¶ 61,380 (1987), Lone Star was granted authorization to provide firm transportation service for Coastal States Gas Transmission Company (Coastal), and to construct and operate certain facilities in interstate commerce necessary to perform the transportation service for a period of one year from the date of the order. Lone Star indicates that by order issued on June 6, 1988, in Docket No. CP87–190–005, Lone Star's authorization to transport for Coastal was amended to allow continued transportation for a term expiring on the earlier of one year from the date of issuance of the order or the date Lone Star accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations. Lone Star than indicates that by order issued June 5, 1989, in Docket No. CP87–190–007, Lone Star's authorization to transport for Coastal was further amended to allow continued transportation for a term expiring on the earlier of one year from the date of issuance of that order or the date Lone Star accepts a blanket certificate pursuant to § 284.221 of the Commission's Regulations. Lone Star states that it has filed an application in Docket No. CP89–1742–000 to abandon certain of its facilities for continued use in intrastate commerce, including a portion of the facilities used for the transportation service for Coastal. Lone Star indicates it has also filed in Docket No. CP89–1743–000 to partially abandon transportation service for Coastal reflecting the proposed facility change from interstate to intrastate commerce. Lone Star, in its current petition to amend, requests that its existing transportation authority be extended to expire September 30, 1999, the date of expiration of its gas transportation contract, and be modified by any Commission action taken in the still-pending Docket No. CP89–1743–000. Lone Star proposes no other changes.

Comment date: April 12, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Texas Eastern Transmission Corporation

[Docket No. CP90–1013–000]

March 22, 1990.

Take notice that on March 20, 1990, Texas Eastern Transmission Corporation (Tetco), Post Office Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP90–1013–000 a request pursuant to Sections 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under the blanket certificate issued in Docket No. CP86–136–000, as amended, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tetco states that pursuant to a service agreement dated November 17, 1989, as amended on November 22, 1989, December 19, 1989, December 27, 1989, January 2, 1990, January 8, 1990, January 18, 1990, and March 12, 1990, it proposes to receive up to 1,475,360 million Btu of natural gas per day at specified points located offshore and onshore Louisiana, as well as in Texas, Mississippi, Arkansas, Alabama, Indiana, Pennsylvania, and New Jersey, and redeliver the gas, less shrinkage, to existing delivery points located offshore and onshore Louisiana, Texas, Mississippi, Illinois, Missouri, Indiana, Kentucky, Arkansas, Alabama, Tennessee, Ohio, West Virginia, Pennsylvania, New Jersey, and New York. Tetco estimates that the peak day and average day volumes would be 1,475,360 million Btu, and that the annual volumes would be 538,506,400 million Btu. It is stated that on December 20, 1989, Tetco initiated a 120-day transportation service for Citizens under § 284.223(a), as reported in Docket No. ST90–1991–000.

Tetco further states that no facilities need be constructed to implement the service. Tetco states that the primary term of the agreement expires on November 1, 1990, but that the service would continue on a month-to-month basis until terminated. Tetco proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT–1.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. ANR Pipeline Company

[Docket No. CP90–1016–000]

March 22, 1990.

Take notice that on March 20, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–1016–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Ledco, Inc. (Ledco), under ANR's blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

ANR requests authorization to transport, on an interruptible basis, up to maximum of 120,000 dt of natural gas per day for Ledco from receipt points located in Wisconsin and Michigan to delivery points located in Louisiana, Ohio, Indiana, Illinois, Texas, Kentucky and Michigan. ANR anticipates transporting, on an average day 120,000 dt and an annual volume of 43,800,000 dt.

ANR states that the transportation of natural gas for Ledco commenced January 24, 1990, as reported in Docket No. ST90–1889–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88–532–000.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–1021–000]

March 22, 1990.

Take notice that on March 21, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–1021–000 a request pursuant to § 157.205 of the Commission's Regulations under the National Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Arco Oil and Gas Company (Arco), a producer, under the blanket certificate issued in Docket No. CP86–435–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated February 1, 1990, under its Rate Schedule FT–1, it proposes to transport up to 15,000 MMBtu per day equivalent of natural gas for Arco. Northern states that it would transport the gas from receipt points located offshore Texas and would deliver the gas in Refugio County, Texas.

Northern advises that service under § 284.223(a) commenced February 1, 1990, as reported in Docket No. ST90–2117–000 (filed March 21, 1990). Northern further advises that it would transport 11,250 MMBtu on an average day and 5,475,000 MMBtu annually.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company

[Docket Nos. CP90–1001–000,[1] CP90–1002–000, CP90–1003–000]

March 22, 1990.

Take notice that on March 19, 1990, Northern Natural Gas Company (Applicant) filed in the above referenced dockets, prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-days transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Appendix

Applicant: Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188.

Blanket Certificate issued in Docket No.: CP86–435–000.

INFORMATION PROVIDED IN PRIOR NOTICE REQUESTS

Docket No.	Transportation rate schedule (type of service)	Shipper	Volumes (MMBTU), peak day, average day, annual	Docket number associated with 120-day transaction	Points of receipt	Points of delivery	Initiation date of 120-day transaction
CP90–1001–000	IT–1 (interruptible)	Sunrise Energy Co.	50,000 37,500 18,250,000	ST90–2059–000	Oklahoma Kansas Texas New Mexico	Kansas Texas New Mexico Oklahoma	2/27/90
CP90–1002–000	IT–1 (interruptible)	Marathon Oil Co.	25,000 18,750 9,125,000	ST90–2061–000	Oklahoma Kansas New Mexico Texas Nebraska	Kansas Texas Nebraska Iowa Minnesota	2/27/90
CP90–1003–000	FT–1 (firm)	Cibola Corp.	10,000 7,500 3,650,000	ST90–1855–000	Oklahoma	Texas	2/14/90

12. Tennessee Gas Pipeline Company

[Docket No. CP90–1010–000]

March 22, 1990.

Take notice that on March 20, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–1010–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Eagle Natural Gas Company (Eagle), a marketer, under the blanket certificate issued in Docket No. CP87–115–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file

with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated January 9, 1990, under its Rate Schedule IT, it proposes to transport up to 40,000 dekatherms (dt) per day equivalent of natural gas for Eagle. Tennessee states that it would transport the gas for Eagle from receipt points located offshore Louisiana and in the states of Texas, Alabama, Mississippi, and Louisiana, to ultimate points of delivery located in the states of Texas, Louisiana, Massachusetts, New York, Rhode Island, New Jersey, Mississippi, Alabama, Tennessee, Kentucky, West Virginia, Pennsylvnaia, Ohio, New Hampshire, Connecticut and Arkansas.

Tennessee advises that service under § 284.223(a) commenced February 16, 1990, as reported in Docket No. ST90–2272–000 (filed March 6, 1990). Tennessee further advises that it would transport 40,000 dt on an average day and 14,600,000 dt annually.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Columbia Gas Transmission Corporation

[Docket No. CP90–945–000]

March 23, 1990.

Take notice that on March 9, 1990, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed an application in Docket No. CP90–945–000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to provide a firm transportation service for Virginia Electric and Power Company (Virginia Power), a new firm service customer, under Applicant's Rate Schedule FTS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate the following facilities:

1991 Construction

(1) Approximately 1.0 mile of 24-inch pipeline loop located in Chesterfield County, Virginia.

(2) Approximately 4.8 miles of 24-inch pipeline loop located in Goochland County, Virginia.

(3) Approximately 4.8 miles of 24-inch pipeline loop located in Albermarle and Louisa County, Virginia.

(4) Seneca Compressor Station—reclassify two units from standby to firm service (6,330 horsepower) located in Pendleton County, West Virginia.

(5) Approximately 2.7 miles of 36-inch pipeline loop located in Clay County, West Virginia.

1992 Construction

Approximately 5.8 miles of 36-inch pipeline loop located in Hardy, West Virginia.

1994 Construction

Approximately 2.3 miles of 36-inch pipeline loop located in Randolph County, West Virginia.

Applicant states that it would receive the firm transportation volumes into its system in Leach, Kentucky, during the period April 1 through October 31 and at Waynesburg, Pennsylvania during the period November 1 through March 31 and redeliver the gas to Commonwealth Gas Services, Inc. (Commonwealth) for ultimate delivery to Virginia Power at its Chesterfield Power Station. It is indicated that the volumes received by Applicant at Waynesburg would be delivered by Equitrans, Inc. (Equitrans) at an existing point of interconnection between the facilities of Applicant and Equitrans located in Greene County, Pennsylvania. Applicant states that on December 13, 1989, Equitrans filed an application in Docket No. CP90–378–000, *inter alia,* to add Virginia Power as a storage customer under its Rate Schedule SS–3. It is stated that Virginia Power's fuel strategy is based on the ability to purchase and transport gas on an interruptible basis to fill storage prior to the winter period, and then to draw upon such storage to service the Chesterfield Power Station during the winter period. It is then indicated that because of timing, however, Applicant would be unable to construct the facilities necessary to render firm transportation service during the 1990–91 winter season to coincide with the storage service proposed by Equitrans for Virginia Power in Docket No. CP90–378–000. Applicant states that to overcome the problem, Applicant intends to implement an interim transportation service for Virginia Power which is firm but interruptible in the event of capacity restraints.

Applicant estimates facility costs of $28,112,000, to be financed by a contribution-in-aid of construction of up to $12,500,000 and the remainder from internally generated funds.

Comment date: April 13, 1990 in accordance with Standard Paragraph F at the end of the notice.

14. Mississippi River Transmission Corporation

[Docket No. CP90–985–000]

March 23, 1990.

Take notice that on March 14, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP90–985–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulation for authorization to transport natural gas for Enron Gas Marketing (Enron), a shipper, under MRT's blanket certificate issued in Docket No. CP89–1121–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MRT proposes to transport on an interruptible basis up to 100,000 MMBtu of natural gas on a peak day, 10,000 MMBtu on an average day, and 3,650,000 MMBtu on an annual basis. It is explained that the service commenced January 31, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–1944. MRT indicates that no new facilities would be necessary to provide the subject service.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. ANR Pipeline Company

[Docket NO. CP90–1018–000]

March 23, 1990.

Take notice that on March 20, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP90–1018–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Unicorp Energy, Inc. (Unicorp), a marketer, under ANR's certificate issued in Docket No. CP88–532–000 on July 25, 1988, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR requests authority to transport up to 100,000 Dt of natural gas per day on an interruptible basis for Unicorp pursuant to a transportation agreement dated October 31, 1988. ANR states that it would receive the gas on an interruptible basis for Unicorp. ANR states that it would receive the gas at ANR's existing points of receipt located in the states of Louisiana, Oklahoma,

Texas, Kentucky, Michigan, Wisconsin and the offshore Texas and Louisiana gathering areas and redeliver the gas for the account of Unicorp at existing interconnections located in the State of Illinois. ANR indicates that the total volume of gas to be transported for Unicorp on an average day would be 100,000 Dt and on an annual basis 36,500,000 Dt.

ANR states that it commenced service for Unicorp on January 21, 1990, under § 284.223(a) as reported in Docket No. ST90–1888–000.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Southern Natural Gas Company

[Docket No. CP90–972–000]

March 23, 1990.

Take notice that on March 13, 1990, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission on Docket No. CP90–850–000 pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to provide an interruptible transportation service for Entrade Corporation (Entrade), a natural gas marketer, under its blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Southern proposes an interruptible transportation service of up to 100,000 MMBtu equivalent of natural gas on peak days, 20,000 MMBtu equivalent on average days, and 7,300,000 MMBtu equivalent annually for Entrade. Southern states that it commenced service for Entrade on January 26, 1990, as reported in Docket No. ST90–1877 pursuant to Section 284.223(a) of the Regulations.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Texas Eastern Transmission Corporation

[Docket No. CP90–1020–000]

March 23, 1990.

Take notice that on March 21, 1990, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP90–1020–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Gulf States Gas Corporation (Gulf States), an intrastate pipeline company, under Texas Eastern's blanket certificate issued in Docket No. CP88–136–000, as amended in Docket No. CP88–136–007, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests authorization to transport, on an interruptible basis, up to a maximum of 15,000 MMBtu of natural gas per day for Gulf States from receipt points located in Texas and Louisiana to a delivery point located in Bienville Parish, Louisiana. Texas Eastern anticipates transporting 15,000 MMBtu of natural gas on an average day and an annual volume of 5,475,000 MMBtu.

Texas Eastern states that the transportation of natural gas for Gulf States commenced February 1, 1990, as reported in Docket No. ST90–2158–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Texas Eastern in Docket No. CP88–136–000, as amended in Docket No. CP88–136–007.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. ANR Pipeline Company, ANR Pipeline Company, Northern Natural Gas Company

[Docket No. CP90–1015–000,[1] Docket No. CP90–1017–000, Docket No. CP90–1019–000]

March 23, 1990.

Take notice that the above referenced companies (Applicants) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

Appendix

Applicant: ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243.

Filing Date: March 20, 1990.

Blanket Certificate Issued in Docket No.: CP88–532–000.

[1] These prior notice requests are not consolidated.

INFORMATION PROVIDED IN PRIOR NOTICE REQUEST

Docket No.	Transportation rate schedule (type of service)	Shipper	Volumes (DTH), peak day, average day, annual	Docket number associated with 120-day transaction	Points of receipt	Points of delivery	Initiation date of 120-day transaction
CP90–1015–000	ITS (interruptible)	MidCon Marketing Corp.	100,000 100,000 36,500,000	ST90–1886–000	Oklahoma Kansas Texas Louisiana Illinois offshore Texas offshore Louisiana	Michigan Wisconsin Illinois Louisiana	1/20/90

INFORMATION PROVIDED IN PRIOR NOTICE REQUEST—Continued

Docket No.	Transportation rate schedule (type of service)	Shipper	Volumes (DTH), peak day, average day, annual	Docket number associated with 120-day transaction	Points of receipt	Points of delivery	Initiation date of 120-day transaction
CP90-1017-000	ITS (interruptible)	Texpar Energy Inc.	50,000 50,000 18,250,000	ST90-1890-000	Oklahoma Kansas Texas Louisiana offshore Texas offshore Louisiana	Wisconsin	1/20/90

Applicant: Northern Natural Gas Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188.

Filing Date: March 21, 1990.

Blanket Certificate Issued in Docket No.: CP86-435-000.

INFORMATION PROVIDED IN PRIOR NOTICE REQUEST

Docket No.	Transportation rate schedule (type of service)	Shipper	Volumes (MMBTU), peak day, average day, annual	Docket number associated with 120-day transaction	Points of receipt	Points of delivery	Initiation date of 120-day transaction
CP90-1019-000	IT-1 (interruptible)	Mobile Natural Gas, Inc.	100,000 75,000 36,500,000	ST90-2113-000	Texas Louisiana Mississippi	Louisiana Texas	2/1/90

19. Gulf Energy Marketing Company

[Docket No. CI90-74-000]

March 23, 1990.

Take notice that on March 20, 1990, Gulf Energy Marketing Company (Gulf Energy) of Suite 700, 1301 McKinney, Houston, Texas 77010, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited term blanket certificate with pregranted abandonment to authorize sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, natural gas purchased from pipelines under interruptible sales programs and imported natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: April 12, 1990, in accordance with Standard Paragraph J at the end of this notice.

20. ProGas U.S.A., Inc.

[Docket No. CI89-223-001]

March 23, 1990.

Take notice that on March 21, 1990, ProGas U.S.A., Inc. (Progas U.S.A.), c/o ProGas Limited, Suite 4100, 400 Third Avenue, SW., Calgary, Alberta, Canada T2P 4H2, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket certificate with pregranted abandonment previously issued by the Commission in Docket No. CI89-223-000 to include authorization to make sales for resale in interstate commerce of Canadian gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: April 2, 1990 in accordance with Standard Paragraph J at the end of the notice.

21. Citrus Trading Corp.

[Docket No. CI90-71-000]

March 23, 1990.

Take notice that on March 19, 1990, Citrus Trading Corp. (Citrus Trading) of P.O. Box 1188, Houston, Texas 77251-1188, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited term blanket certificate with pregranted abandonment to authorize sales for resale in interstate commerce of natural gas including imported natural gas, liquefied natural gas and interstate pipeline system supply gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: April 12, 1990 in accordance with Standard Paragraph J at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion

for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7419 Filed 3-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-34-004, et al.]

Filing of Pipeline Refund Reports

March 26, 1990.

Take notice that the pipelines listed below have submitted to the Commission for filing proposed refund reports.

Filing date	Company	Docket No.
2/28/90	ANR Pipeline Company.	RP88-34-004
3/5/90	Trunkline Gas Company.	RP88-180-016
3/5/90	ANR Pipeline Company.	RP89-39-002
3/15/90	Panhandle Eastern Pipe Line Company.	TA90-1-28-002
3/21/90	Valley Gas Transmission Company.	RP89-157-004

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, on or before April 17, 1990. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7420 Filed 3-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-37-009 and RP89-82-009]

High Island Offshore System; Notice of Proposed Changes

March 26, 1990.

Take notice that High Island Offshore System (HIOS) on March 19, 1990, tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Original Volume No. 1:

Effective April 1, 1989

2/Sub First Revised Sheet No. 66.

2/Sub First Revised Sheet No. 68.

HIOS states that these sheets are being filed to comply with the Federal Energy Regulatory Commission's (Commission) Letter Order issued March 2, 1990 in the above-captioned dockets.

HIOS states that copies of this filing were served on all participants in the above referenced docket and on any parties required by the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before April 2, 1990, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7421 Filed 3-30-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Objection to Proposed Remedial Order Filed

Week of March 19 through March 23, 1990.

During the week of March 19 through March 23, 1990, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 23, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Robert J. Martin, et al., LRO-0001, Crude Oil

On March 19, 1990, Robert J. Martin, Gordon S. Gregson, Wesreco, Inc., Western Refining Company, Western Oil Marketing Company, Pioneer Trading Co. and Quad Energy, James M. Betz d/b/a Betz Oil and Trading Company, Kenneth H.N. Taves, and K.T. Trading Corp. (collectively "the Respondents"), filed a Notice of Objection to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration (ERA) issued to the Respondents on February 26, 1990. In the PRO, the ERA found that during the period January 1980 through December 1980, the Respondents, in combination

with each other, planned, participated in, authorized, approved the use of, and illicitly benefitted from a crude oil certification swap scheme to effect the transformation of all of Western Refining Company's controlled certifications into entitlements purchase-exempt certifications, in violation of Entitlements Program provisions, 10 CFR 211.66(b), (h) and 211.67, as well as the contravention/circumvention provisions of 10 CFR 205.202 and 210.62(c). According to the PRO, the alleged violation amounted to $23,144,485.

[FR Doc. 90–7488 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order, by the Office of Hearings and Appeals

Week of February 5 through February 9, 1990.

During the week of February 5 through February 9, 1990, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 16, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Harbor Enterprises, Inc., Seward, Alaska, Case No. LEE–0003, Reporting Requirements

Harbor Enterprises, Inc. (Harbor) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." The exception request, if granted, would permit Harbor to be exempted from filing Form EIA–782B. On February 7, 1990, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 90–7489 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Proposed Decision and Order

Week of March 12 through March 16, 1990.

During the week of March 12 through March 16, 1990, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: March 21, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Knox Nelson Oil Co., Inc., Pine Bluff, AR, LEE–0006, Reporting RQ'MTS.

Knox Nelson Oil Company, Inc. filed an Application for Exception from the Energy Information Administration (EIA) reporting requirements. The exception request, if granted, would relieve Knox Nelson from its requirement to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report." On March 15, 1990, the Department of Energy issued a Proposed Decision and Order which determined that exception relief be denied.

[FR Doc. 90–7490 Filed 3–30–90; 8:45 am]

BILLING CODE 6450–01–M

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $985,199.00 (plus accrued interest) which was remitted by the City of Long Beach. The DOE has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days from date of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the Case Number LEF–0012.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with section 205.282(b) of the procedural regulations of the Department of Energy, notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures which will be used to distribute funds remitted by the City of Long Beach to the DOE. The monies remitted by the City of Long Beach represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program 10 CFR 212.78.

The DOE has tentatively decided that the distribution of the monies received from the City of Long Beach will be governed by the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, FR 51 FR 27899 (August 4, 1986). That policy states that all crude oil overcharge funds shall be divided among the states, the Federal government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 22, 1990.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Proposed Decision and Order

March 22, 1990.

Implementation of Special Refund Procedures

Name of Firm: City of Long Beach.
Date of Filing: February 21, 1990.
Case Number: LEF–0012.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a petition for the Implementation of Special Refund Procedures for funds which the DOE has obtained from the City of Long Beach, Case No. T00T00004W. The City of Long Beach remitted $985,199.00 to the DOE, which deposited the funds in an interest-bearing escrow account maintained at the Department of the Treasury. The funds represent revenues that exceeded recoupable allowed expenses for projects qualifying under the Tertiary Incentive Program, 10 CFR 212.78. An additional $36,469.41 has accrued in interest on these funds as of February 28, 1990.

The procedural regulations of the DOE establish general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. Although the remittance by the City of Long Beach did not result from alleged violations of the regulations, it represents restitution for crude oil sales made at higher prices than would otherwise have been permissible if the projects had not qualified under section 212.78. Since the effect of those higher prices was spread throughout the country, it is appropriate to combine these funds with crude oil overcharge funds. *Tootle Petroleum, Inc.*, Case No. KEF–0140 (October 10, 1989) (Proposed Decision). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the City of Long Beach remittance. Therefore, we propose to grant the ERA's petition and assume jurisdiction over distribution of these funds.

I. Background

On July 28, 1986, the DOE issued a Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (MSRP). The MSRP, issued as a result of a court approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all Subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 F.R. 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP. It also solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 F.R. 11737 (April 10, 1987) (the April 1987 Notice). The April 1987 Notice set forth generalized procedures and provided guidance to assist applicants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of crude oil price controls and to prove that they were injured by the alleged overcharges. The April 1987 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures have been applied by the DOE in numerous cases since the April 1987 Notice. *See, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*);

Ernest A. Allerkamp, 17 DOE ¶ 85,079 (1988) (*Allerkamp*). They have also been approved by the United States District Court for the District of Kansas. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in crude oil overcharge refund proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.*, 671 F. Supp. at 1323. The court also held that the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

II. The Proposed Refund Procedures

A. Refund Claims

We now propose to apply the procedures discussed in the April 1987 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, $985,199.00 plus interest is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $197,039.80 (plus interest), for direct refunds to applicants in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may later be adjusted downward if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. *A. Tarricone Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). Reseller and retailer applicants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act § 3003(b)(2), 15 U.S.C. § 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established by the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc. v. Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible applicants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amount involved in this determination ($985,199.00) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR § 211.67.* This yields volumetric refund amount of $0.00000048748 per gallon.

As we have stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See, e.g., Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.*, 17 DOE ¶ 85,568, *modified*, 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.*, 19 DOE ¶ 85,200, *modified*, 19 DOE ¶ 85,236 (1989). The deadline for filing an Application for a Refund from the third pool of funds, including the funds involved in this proceeding, is March 31, 1991. *Cibro Sales Corp.*, 20 DOE ¶ 85,036 (1990). The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the amount subject to this Proposed Decision, or $788,159.20 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is therefore ordered that: The refund amount remitted to the Department of Energy by the City of Long Beach, Case Number T00T00004W, shall be distributed in accordance with the foregoing Decision.

[FR Doc 90–7486 Filed 3–30–90; 8:45 am]
BILLING CODE 6450–01–M

*The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This mechanism had the effect of evenly dispersing overcharges resulting from crude oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.*, 13 DOE ¶ 85,217 at 88,564 (1985).

Proposed Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the proposed procedures for disbursement of $371,177.33 (plus accrued interest) which was remitted by

Indpendent Refining Corp. and Independent Trading Corp. The DOE has tentatively determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days from date of publication of this notice in the Federal Register and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the Case Number LEF–0009.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures which will be used to distribute funds remitted by Independent Refining Corp. (IRC) and Independent Trading Corp. (Trading) to the DOE. IRC and Trading remitted the monies in accordance with a Settlement Agreement entered into with the DOE. The Settlement Agreement resolved the DOE's claims concerning, *inter alia*, IRC's and Trading's violations of regulations pertaining to the resale of Crude oil, 10 CFR part 212, Subpart L.

The DOE has tentatively decided that the distribution of the monies received from IRC and Trading will be governed by the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). That policy states that all crude oil overcharge funds shall be divided among the states, the Federal Government, and injured purchasers of refined products. Under the plan we are proposing, refunds to the states would be distributed in proportion to each state's consumption of petroleum products during he period of price controls. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: March 27, 1990.

Thomas L. Wieker,

Acting Director, Office of Hearings and Appeals.

Proposed Decision and Order—Implementation of Special Refund Procedures

Names of Firms: Independent Refining Corp. Independent Trading Corp.

Date of Filing: February 2, 1990.

Case Number: LEF–0009.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

The ERA has filed a Petition for the Implementation of Special Refund Procedures for funds which the DOE has obtained from Independent Refining Corp. (IRC) and Independent Trading Corp. (Trading). Pursuant to a Settlement Agreement entered into with the DOE, IRC and Trading have remitted to the DOE a total of $371,177.33, which was deposited in an interest-bearing escrow account maintained at the Department of the Treasury. An additional $72,022.80 in interest has accrued on these funds as of February 28, 1990.

I. Background

On July 9, 1982, IRC and Trading separately filed for bankruptcy protection with the United States Bankruptcy Court for the Southern District of Texas, Houston Division. The DOE filed Proofs of Claim in the bankruptcy proceedings for violations of the Federal petroleum price regulations. One portion of the DOE claim concerned violations of 10 CFR part 212, subpart L in the sale of crude oil. These violations were adjudicated in a Remedial Order issued to the firms on March 7, 1986. Independent Trading Corp., 14 DOE ¶ 83,003 (1986). A second part concerned alleged violations of 10 CFR part 212, subpart E in connection with the sale of refined petroleum products. On February 11, 1987, IRC and Trading entered into a Settlement Agreement with the DOE. The Settlement Agreement, which resolved the DOE's Proofs of Claim, was approved by the Bankruptcy court on September 16, 1987. In compliance with this Settlement Agreement, IRC and Trading remitted a total of $371,177.33 to the DOE. This Proposed Decision and Order sets forth the OHA's plan to distribute these funds.

II. Jurisdiction and Authority

The procedural regulations of the DOE establish general guidelines by which the OHA may formulate and implement a plan for distribution of refunds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive.

After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the funds remitted by IRC and Trading. Therefore, we propose to grant the ERA's petition and assume jurisdiction over distribution of the funds.

III. Proposed Refund Procedures

Generally, when funds are remitted to the DOE in settlement of both crude oil and refined product violations, we divide the settlement fund into refined product and crude oil pools. This allocation of funds is often in proportion to the amounts of the alleged violations, with adjustments being made to take into consideration the status of the enforcement proceedings that have been settled. *See, e.g., Texaco Inc.*, 19 DOE ¶ 85,200, *modified*, 19 DOE ¶ 85,236 (1989). In the present case, however, the monetary amount of the alleged petroleum product violations is insignificant in relation to the amount of the crude oil violations.[1] This disparity

[1] According to the ERA, the petroleum product violations revealed in the audit of IRC totalled approximately $50,000. *See* Memorandum of March 6, 1990 telephone conversation between Ben Lemos, ERA, and Andre Fiebig, OHA Staff Attorney. In contrast, the total of the crude oil overcharges found

Continued

is even greater when we consider that the crude oil overcharges have been adjudicated in a final Remedial Order while the allegations regarding the pricing of petroleum products involved alleged violations that were never set forth in even a Proposed Remedial Order. Accordingly, we propose not to establish a refined product pool, but instead, to allocate the entire amount remitted pursuant to the Settlement Agreement to crude oil.

We further propose that the Settlement Fund be distributed in accordance with the Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges issued by the DOE on July 28, 1986. 51 FR 27899 (August 4, 1986) (the MSRP). The MSRP, issued as a result of a court approved Settlement Agreement in *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan.), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved initially to satisfy valid claims by injured purchasers of petroleum products. Eighty percent of these funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

The OHA has been applying the MSRP to all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). That Order provided a period of 30 days for the filing of any objections to the application of the MSRP. It also solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings.

On April 6, 1987, the OHA issued a Notice analyzing the numerous comments which it received in response to the August 1986 Order. 52 FR 11737 (April 10, 1987) (the April 1987 Notice). The April 1987 Notice set forth generalized procedures and provided guidance to assist applicants who wish to file refund applications for crude oil monies under the subpart V regulations. All applicants for refunds would be required to document their purchase volumes of petroleum products during the period of crude oil price controls and to prove that they were injured by the alleged overcharges. The April 1987 Notice indicated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need not submit any further proof of injury to receive a refund. Finally, we stated that refunds would be calculated on the basis of a per gallon refund amount derived by dividing crude oil violation amounts by the total consumption of petroleum products in the United States during the period of price controls. The numerator would include the crude oil overcharge monies that were in the DOE's escrow account at the time of the settlement and a portion of the escrow funds in the M.D.L. 378 escrow at the time of the settlement.

These procedures have been applied by the DOE in numerous cases since the April 1987 Notice. *See, e.g., Shell Oil Co.*, 17 DOE ¶ 85,204 (1988) (*Shell Oil*); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*). They have also been approved by the United States District Court for the District of Kansas. *In Re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan. 1987), *aff'd*, 857 F.2d 1481 (Temp. Emer. Ct. App. 1988). Various States had filed a Motion with that court claiming that the OHA violated the Settlement Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in crude oil overcharge refund proceedings. In denying the Motion, the court concluded that the Settlement Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.*, 671 F. Supp. at 1323. The court also held that the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323–24.

A. Refund Claims

We propose to apply the procedures discussed in the April 1987 Notice in the present crude oil subpart V proceeding. As noted above, $371,177.33 plus interest is covered by this Proposed Decision. We have decided to reserve initially the full 20 percent of these funds, or $74,235.47 (plus interest), for direct refunds to applicants in order to ensure that sufficient funds will be available for refunds to injured parties. The amount of the reserve may later to adjusted downward if circumstances warrant.

The process which the OHA will use to evaluate claims for crude oil refund monies will be modeled after the process the OHA has used in subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). Applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry and who were not subject to the DOE price regulations, are presumed to have absorbed rather than passed on alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond volumes of product purchased in the distribution scheme in which the overcharges occurred. *A. Tarricone Inc.*, 15 DOE ¶ 85,495 at 88,893–96 (1987). Reseller and retailer applicants must submit detailed evidence of injury, and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They may, however, use econometric evidence of the type employed in the OHA Report to the District Court in the Stripper Well Litigation, 6 Fed. Energy Guidelines ¶ 90,507 (June 19, 1985). *See* Petroleum Overcharge Distribution and Restitution Act section 3003(b)(2), 15 U.S.C. 4502(b)(2). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established by the Settlement Agreement have waived their rights to apply for crude oil refunds under subpart V. *See Mid-America Dairymen Inc.* v. *Herrington*, 878 F.2d 1448 (Temp. Emer. Ct. App. 1989); *accord, Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible applicants who purchased refined petroleum products will be calculated on the basis of a volumetric refund amount derived by dividing the crude oil refund amounts involved in this determination ($371,177.33) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868. This approach reflects the fact that crude oil overcharges were spread equally throughout the country by the Entitlements Program, 10 CFR 211.67.[2]

in the Remedial Order was $13,332,453. Therefore, the $50,000 of alleged product violations represents only 0.37 percent of the total alleged violations. An equivalent 0.37 percent of the settlement fund would be $1,387.

[2] The DOE established the Entitlements Program to equalize access to the benefits of crude oil price controls among all domestic refiners and their downstream customers. To accomplish this goal, refiners were required to make transfer payments among themselves through the purchase and sale of "entitlements." This mechanism had the effect of

Continued

This yeilds a volumetric refund amount of $0.00000018366 per gallon.

As we have stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *See, e.g., Allerkamp,* 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That application will be deemed to be filed in all crude oil proceedings finalized to date. A deadline of June 30, 1988 was established for all refund applications for the first pool of crude oil funds. The first pool was funded by the crude oil refund proceedings, implemented pursuant to the MSRP, up to and including *Shell Oil Co.,* 17 DOE ¶ 85,204 (1988). A deadline of October 31, 1989 was established for applications for refunds from the second pool of crude oil funds. The second pool was funded by those crude oil refund proceedings beginning with *World Oil Co.,* 17 DOE ¶ 85,568, *modified,* 17 DOE ¶ 85,669 (1988), and ending with *Texaco Inc.,* 19 DOE ¶ 85,200, *modified,* 19 DOE ¶ 85,236 (1989). The deadline for filing an application for a refund from the third pool of funds, including the funds involved in this proceeding, is March 31, 1991. *Cibro Sales Corp.,* 20 DOE ¶ 85,036 at 88,078 (1990). The volumetric refund amount from the third pool of crude oil funds will be increased as additional crude oil violation amounts are received in the future. Applicants may be required to submit additional information to document their refund claims for these future amounts. Notice of any additional amounts available in the future will be published in the **Federal Register.**

B. Payments to the States and Federal Government

Under the terms of the MSRP, we propose that the remaining 80 percent of the alleged crude oil violation amounts subject to this Proposed Decision, or $296,941.86 (plus interest), be disbursed in equal shares to the states and federal government for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

It is therefore ordered that: The refund amounts remitted to the Department of Energy by Independent Refining Corp. and Independent Trading Corp. pursuant to a Settlement Agreement entered into on February 11, 1987 (Case No. 650X00290W) shall be distributed in accordance with the foregoing Decision.

[FR Doc. 90-7487 Filed 3-30-90; 8:45 am]

BILLING CODE 6450-01-M

evenly dispersing overcharges resulting from oil miscertifications throughout the domestic refining industry. *See Amber Refining Inc.,* 13 DOE ¶ 85,217 at 88,564 (1985).

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3751-5]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Science Applications International Corporation (SAIC) and their subcontractors: Midwest Research Institute and ENSECO, information which has been or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). These firms are assisting EPA in the areas of methodology development and evaluation; manual preparation and revision; quality assurance and control; sampling and analysis; preparation of background documents; analysis of regulatory options; the operation of a waste sample repository; and other aspects of 40 CFR. Some of the information may have a claim of business confidentiality.

DATES: The transfer of data submitted to EPA will occur no sooner than April 9, 1990.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste, Information Management Staff (OS-312), U.S. Environmental Protection Agency, 401 M. Street, SW., Washington, DC, 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460 (202) 382-3410.

SUPPLEMENTARY INFORMATION:

Transfer of Data

The U.S. Environmental Protection Agency is involved in a variety of activities to support and expand the hazardous waste regulations. The Agency is responsible for method development and evaluation; quality assurance and control; regulatory actions related to the framework of the regulatory system; regulations identifying hazardous waste; and other aspects of 40 CFR parts 260 and 265.

Under EPA Contract No. 68-W9-0011, SAIC, and their subcontractors: Midwest Research Institute and ENSECO, will assist the Characterization and Assessment Division, Technical Assessment Branch, Office of Solid Waste, in collecting and analyzing waste samples, (used oil in particular); methodology development and evaluation; manual preparation and revision; quality assurance and control; preparation of background documents; analysis of regulatory options; and the operation of a waste sample respository. The information being transferred to SAIC and their subcontractors may have been or will be claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h) EPA has determined that SAIC and their subcontractors require access to Confidential Business Information (CBI) submitted to EPA under the authority of RCRA, to perform work satisfactorily under the above-noted contract. EPA is issuing this notice to inform all submitters of CBI that EPA may transfer to these firms, on a need-to-know basis, CBI collected under the authority of RCRA. Upon completing their review of materials submitted, SAIC and their subcontractors, will return all such materials to EPA.

SAIC and their subcontractors have been authorized to have access to RCRA CBI under the EPA "Contractors Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA has approved the security plan of its contractors and will inspect their facilities prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign non-disclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: March 23, 1990.

Mary A. Gade,

Acting Assistant Administrator.

[FR Doc. 90-7451 Filed 3-30-90; 8:45 am]

BILLING CODE 6560-60-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Booth Communications et al

1. The Commission has before it the following groups of mutually exclusive applications for eight new FM stations:

Applicant, City and State	File No.	MM Docket No.
I		
A. Booth Communications; Socastee, SC	BPH-871230MK	90-93
B. Cat Communications, Inc.; Socastee, SC	BPH-871231MM	
C. Surfside Broadcasting Corporation; Socastee, SC	BPH-871231MO	
D. Raymond F. Reich; Socastee, SC	BPH-871231MS	
E. Clarence T. Barinowksi; Socastee, SC	BPH-871231MY	
F. Dorothy Blanton; Socastee, SC	BPH-871231NC	
G. Puritan Radiocasting Company; Socastee, SC	BPH-871231ND	
Issue heading and applicant		
1. Financial, F		
2. Air Hazard, B,D,F		
3. Comparative, A,B,C,D,E,F,G		
4. Ultimate, A,B,C,D,E,F,G		
II		
A. Peter Joseph Devlin and Patricia Eve Devlin; Seymour, WI	BPH-880216MS	90-80
B. Earl J. Brooker and Carol L. Brooker d/b/a/ Brooker Broadcasting; Seymour, WI	BPH-880217ML	
C. Ms. Kim M. Gulseth d/b/a/ Muffy's Radio Company; Seymour, WI	BPH-880217MM	
D. Gregory D. Sauve and Patricia A. Sauve d/b/a/ Seymour FM Broadcasting; Seymour, WI	BPH-880217MX	
Issue heading and applicants		
1. Air Hazard, C		
2. Financial, D		
3. Comparative, A,B,C,D,		
4. Ultimate, A,B,C,D		
III		
A. Phase One Communications, Inc.; Manchester, TN	BPH-871228ML	90-79
B. Dianne M. Sawyer; Manchester, TN	BPH-871229MK	
C. Manchester Communications, Inc.; Manchester, TN	BPH-871230MI	
D. Aileen Burnett Sartin; Manchester, TN	BPH-871231MN	
E. Coffee County Broadcasting, Inc.; Manchester, TN	BPH-871231MR	
F. Tenncom, Ltd.; Manchester, TN	BPH-871231NB	
Issue heading and applicants		
1. Comparative, A,B,C,D,E,F		
2. Ultimate, A,B,C,D,E,F		
IV		
A. Ronnie E. and Mildred G. Price; Beebe, AR	BPH-880318MO	90-82
B. Judith Ann Davis & Barbara Jo Faith; Beebe, AR	BPH-880407MH	
Issue heading and applicants		
1. Air Hazard, A		
2. Comparative, A,B		
3. Ultimate, A,B		
V		
A. Warren D. Welliver; Ashland, MO	BPH-880218MC	90-92
B. AshMo Radio, Inc.; Ashland, MO	BPH-880219MA	
C. Sobocomo Radio, Inc.; Ashland, MO	BPH-880219MD	
D. The Clair Group, a Missouri Limited Parnership; Ashland, MO	BPH-880219MF	
E. Multicom Broadcasting Inc.; Ashland, MO	BPH-880219MJ	
F. Melvin B. Caldwell; Ashland, MO	BPH-880219ML	
G. Kathy J. Withers; Ashland, MO	BPH-880219MN	
H. Thomas R. Koenig; Ashland, MO	BPH-880219MO	

Applicant, City and State	File No.	MM Docket No.
Issue heading and applicants 1. See Appendix, B 2. See Appendix, B 3. See Appendix, B 4. Air Hazard, B,D,H 5. Comparative, A–H 6. Ultimate, A–H		
VI		
A. William E. Kuiper, Jr.; Walker, MI	BPH–880125MA	90–83
B. GNS Broadcasting; Walker, MI	BPH–880126MH	
C. Broadcast House Incorporated; Walker, MI	BPH–880126MN	
D. MW Multicom, Inc.; Walker, MI	BPH–880126MU	
E. Betty Jean Goulooze and John Robert McClure, Jr., d/b/a Walker Broadcasting Co.; Walker, MI	BPH–880126NE	
Issue heading and applicants 1. Air Hazard, A 2. Comparative, A,B,C,D,E 3. Ultimate, A,B,C,D,E		
VII		
A. Susan I. Waters; Fort Bragg, CA	BPH–880527MQ	90–81
B. Keith B. Bussman d/b/a KB Broadcasting; Fort Bragg, CA	BPH–880602NH	
C. Charles and Josephine Stone d/b/a Fort Bragg Broadcasting Company; Fort Bragg, CA	BPH–880202ON	
Issue heading and applicants 1. Environmental Impact, B,C 2. Comparative, A,B,C 3. Ultimate, A,B,C		
VIII		
A. Radio Representatives, Inc.; Honolulu, HI	BPH–870910MD	90–84
B. Gene A. Folden Broadcasting of Honolulu, Inc.; Honolulu, HI	BPH–870910MQ	
C. Mahalocolo, Ltd.; Honolulu, HI	BPH–870910MV	
D. Kasa Moku Ka Pawa Broadcasting, Inc.; Honolulu, HI	BPH–870910MZ	
E. Daniel and Denise Lamaute; Honolulu, HI	BPH–870910NF	
F. Jean Yang; Honolulu, HI	BPH–870910NM	
G. (John Dean and Zoe Hazen d/b/a) Hazen Communications; Honolulu, HI	BPH–870910NM	
H. Santee Broadcasting, Inc.; Honolulu, HI	BPH–870910NP	
I. La Kio O Ka Po'e Hawaii Nei; Honolulu, HI	BPH–870910NU	
J. Honolulu FM Limited Partnership; Honolulu, HI	BPH–870910NZ	
K. Pacific Tropical Broadcasting; Honolulu, HI	BPH–870910OF	
L. Echonet Corporation; Honolulu, HI	BPH–870910MX (previously Dismissed).	
Issue heading and applicants 1. (See Appendix), J 2. (See Appendix), J 3. (See Appendix), J 4. (See Appendix), J 5. Environmental, A,B,C,D,F,G,I,J 6. Air Hazard, A,B,C,D,E,F,G,H,I,J,K 7. Comparative, A,B,C,D,E,F,G,H,I,J,K 8. Ultimate, A,B,C,D,E,F,G,H,I,J,K		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Ashland, Missouri)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of B (AshMo).

2. To determine whether B's (AshMo) organizational structure is a sham.

3. To determine, in light of evidence adduced pursuant to issues 1 and 2 above, whether B (AshMo) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Honolulu, Hawaii)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party-in-interest to J's (Partnership) application.

2. To determine whether J's (Partnership) organizational structure is a sham.

3. To determine whether J (Partnership) violated Section 1.65 of the Commission's Rules, and/or lacked candor by failing to report the interest held by one of its partners in an application pending before the Commission.

4. To determine, from the evidence adduced pursuant to issues 1 through 3 above, whether J (Partnership) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-7431 Filed 3-30-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for six new FM stations:

Applicant, City and State	File No.	MM Docket No.
I.		
A. Marilyn L. Evans and Billy R. Evans d/b/a Evans Broadcasting; Louisville, KY	BPH-880121MR	90-97
B. William E. Benns, III; Louisville, KY	BPH-880121MQ	
C. Enclave Communications Corp.; Louisville, KY	BPH-880126MV	
D. K-RIVA, Inc.; Louisville, KY	BPH-880126MC	
E. Barol of Louisville, Inc.; Louisville, KY	BPH-880126MD	
F. Young Broadcasting Corporation of Kentucky; Louisville, KY	BPH-880126MI	
G. Derby Broadcast Limited Partnership; Louisville, KY	BPH-880126MO	
H. Louisville FM Broadcasters Limited Partnership; Louisville, KY	BPH-880126MP	
I. Walrus Broadcasting; Louisville, KY	BPH-880126MV	
J. Louisville FM, Inc.; Louisville, KY	BPH-880126NC	
K. Kentucky Urban Broadcasters, Ltd.; Louisville, KY	BPH-880126NH	
L. Krystal Communications Limited Partnership; Louisville, KY	BPH-880126NI	
M. Amos Lee Stinson, Sr.; Louisville, KY	BPH-880126NK	
N. Cochran-Forster Partnership; Louisville, KY	BPH-880126NL	
O. Gail Jakoby-Mc Intosh; Louisville, KY	BPH-880126NS	
P. Louisville Broadcasters Ltd.; Louisville, KY	BPH-880126NZ	
Q. GRC Broadcasting Co., Inc.; Louisville, KY	BPH-880126OA	
R. Midamerica Electronics Service, Inc.; Louisville, KY	BPH-880126OB	
S. Louisville Communications Limited Partnership; Louisville, KY	BPH-880126OC	
T. Intermart Broadcasting Louisville, Inc.; Louisville, KY	BPH-880126OD	
U. Crosswinds Limited Partnership; Louisville, KY	BPH-880126OH	
V. William E. Summers, III; Louisville, KY	BPH-880126OJ	
W. Dr. Lorraine M. Golden and Ruth Sirko d/b/a Commonwealth Partnership; Louisville, KY	BPH-880126OK	
X. Thoroughbred Broadcasting L.P.; Louisville, KY	BPH-880126OQ	
Y. Brightness Ministries, Inc.; Louisville, KY	BPH-880126OU	
Z. Echonet Corporation; Louisville, KY	BPH-880126MQ (Previously Dismissed).	
AA. Charles J. Jenkins; Louisville, KY	BPH-880126MS (Dismissed Herein).	

Issue heading and applicants

1. See Appendix, G
2. See Appendix, G
3. See Appendix, G
4. Financial Qualifications, A
5. City Coverage—FM, M
6. Comparative, A-Y
7. Ultimate, A-Y

II.		
A. Sunbelt, Limited Partnership; Brundidge, AL	BPH-880308ME	90-96
B. Ida Paulette Knox Wathins; Brundidge, AL	BPH-880318MF	
C. Troy Broadcasting, Corp.,; Brundidge, AL	BPH-880310MJ	
D. Brundidge Radio Joint Venture; Brundidge, AL	BPH-880310MG	
E. David G. Holmes; Brundidge, AL	BPH-880310MM	
F. Stephen G. McGowan; Brundidge, AL	BPH-880310MO	
G. Ralph W. Black, Jr.; Brundidge, AL	BPH-880310MT	
H. Good News Limited Partnership; Brundidge, AL	BPH-880310NF	
I. Pike County Broadcasting; Brundidge, AL	BPH-880310NQ	

Issue heading and applicants

1. Air Hazard, F
2. See Appendix, H
3. See Appendix, H
4. See Appendix, H
5. Comparative, A-I
6. Ultimate, A-I

III.		
A. Rania S. Levan; Lake Luzerne, N.Y.	BPH-880219MC	90-98
B. John Anthony Bulmer; Lake Luzerne, N.Y.	BPH-880219MK	

Applicant, City and State	File No.	MM Docket No.
Issue heading and applicants 1. Air Hazard, A 2. Comparative, Both 3. Ultimate, Both		
IV.		
A. Palmetto Broadcasting System, Inc.; Kershaw, SC	BPH-880322MB	90-99
B. Jeffrey C. Sigmon; Kershaw, SC	BPH-880324NK	
C. Steven C. Stewart; Kershaw, SC	BPH-880324OI	
Issue heading and applicants 1. Comparative, A, B, C 2. Ultimate, A, B, C		
V.		
A. Susan Elizabeth Davenport; S. Yarmouth, MA	BPH-880107MD	90-95
B. Nantucket Radio, Inc.; S. Yarmouth, MA	BPH-880107MJ	
C. South Yarmouth and Cape Cod Broadcasting Company, Inc.; S. Yarmouth, MA	BPH-880107MK	
D. John W. Miller; S. Yarmouth, MA	BPH-880107MX	
E. The Eastern Company d/b/a Eastco; S. Yarmouth, MA	BPH-880107MY	
F. Genesis Radio, Inc.; S. Yarmouth, MA	BPH-880107NG	
G. American Indian Broadcast Group, Inc.; S. Yarmouth, MA	BPH-880107NI	
H. Cape Cod FM Limited Partnership; S. Yarmouth, MA	BPH-880107MF (Previously Dismissed).	
Issue heading and applicants 1. (Appendix), B 2. (Appendix), B 3. (Appendix), B 4. Environmental, F 5. Comparative, A,B,C,D,E,F,G 6. Ultimate, A,B,C,D,E,F,G		
VI.		
A. R & B Ltd.; Noblesville, IN	BPH-880301MF	90-94
B. Bible Broadcasting Network, Inc.; Noblesville, IN	BPH-880301ML	
C. Weiss Broadcasting of Noblesville, Inc.; Noblesville, IN	BPH-880301MQ	
D. Broadcast Communications, Inc.; Noblesville, IN	BPH-880301MZ	
E. WMRI, Inc.; Noblesville, IN	BPH-880301NV	
F. SpaceCom, Inc.; Noblesville, IN	BPH-880301NZ	
G. Cochran-Forster Partnership; Noblesville, IN	BPH-880301OW	
H. Ben L. Umberger; Noblesville, IN	BPH-880301PD	
Issue heading and applicants 1. Financial, G 2. Comparative, A-H 3. Ultimate, A-H		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding 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 may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay, Assistant Chief,

Audio Services Division, Mass Media Bureau.

Appendix (Louisville, Kentucky)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of G (Derby).

2. To determine whether G's (Derby) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether G (Derby) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (Brundidge, Alabama)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of H (Good News).

2. To determine whether H's (Good News) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2 above, whether H (Good News) possesses the basic qualifications to be a licensee of the facilities sought herein.

Appendix (South Yarmouth, Massachusetts)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to B (Nantucket)'s application.

2. To determine whether B (Nantucket)'s organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 through 2, above, whether B (Nantucket) possesses the

basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90–7432 Filed 3–30–90; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200340

Title: Port of San Francisco/Empresa Lineas Maritimas Argentinas S.A. (ELMA) Terminal Agreement

Parties:

Port of San Francisco (Port)
Empresa Lineas Maritimas Argentinas S.A. (ELMA)

Synopsis: The Agreement provides that, as consideration for ELMA's agreement to make the Port of San Francisco its published regularly scheduled Northern California port of call, ELMA will pay the Port dockage and wharfage rates at less than 100 percent of those named in the Port's Tariff No. 3–C. The agreement's term is five years.

By Order of the Federal Maritime Commission.

Dated: March 27, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–7408 Filed 3–30–90; 8:45 am]
BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the meeting of the President's Council on Physical Fitness and Sports on Thursday, April 5, 1990, at The Westin Hotel, 24th & M Sts., NW., Washington, DC.

This meeting will be open to the public on April 5 from 10:30 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m. Attendance by the public will be on a space available basis.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code, and section 10(d) of Public Law 92–463, the meeting will be closed to the public on April 5 from 9:00 a.m.–10:30 a.m. to review, discuss and evaluate government laws, regulations and policy guidelines pertaining to conflicts of interest and ethical conduct. The discussion could reveal confidential or privileged commercial, financial or personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

FOR FURTHER INFORMATION CONTACT: Wilmer D. Mizell, Executive Director, President's Council on Physical Fitness and Sports, 450 5th Street, NW., Suite 7103, Washington, DC.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order #12345, and subsequent orders. The functions of the Council are: (1) To advise the President and Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and Secretary, as necessary, actions to accelerate progresss; (2) advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the members of the national program of physical fitness and sorts, to report on on-going Council programs, and to plan for future directions.

Because of the need to convene the Council as soon as possible so that it may contribute its expertise to government involvement in Physical Fitness Month in May 1990, the usual requirement of advance notice has not been met.

Dated: March 28, 1990

Wilmer D. Mizell,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 90–7504 Filed 3–30–90; 8:45 am]
BILLING CODE 4160–17–M

Centers for Disease Control

[Announcement Number 019]

Project Grants—Health Programs for Refugees

Introduction

The Centers for Disease Control (CDC) announces that project grant applications are to be accepted for the Health Programs for Refugees.

AUTHORITY: This program is authorized by section 412(b)(5) of the Immigration and Nationality Act [8 U.S.C. 1522(b)(5)], as amended.

Eligibility

Eligibility applicants for this program are the official State health agencies, and, in certain situations, health agencies of political subdivisions of a State. Direct grants to health agencies of political subdivisions will be considered for funding only in special situations which are clearly justified and after consultation with appropriate staff of the official State health agency, the Health Programs for Refugees Section of the Center for Prevention Services, CDC, and the appropriate Department of Health and Human Services (HHS) Regional Office.

Availability of Funds

Approximately $3,275,000 is expected to be available in Fiscal Year 1990 to fund up to 45 competing continuation grants. It is expected that the average award will be $75,000, ranging from $3,000 to $1,000,000, beginning on or about July 1, 1990 for a 12 month budget period within a 5 year project period. Funding estimates may change. There is no statutory cost participation formula. Priority will be given to funding existing programs.

Purpose

The purpose of this program is to augment State and local resources and to assist States and localities in providing health assessments and follow-up activities to refugees for problems of public health concern. Health assessments of refugees are intended to identify and lead to the treatment of health conditions which could affect the public health or the personal well-being of refugees and impede their effective resettlement. Communities with the largest refugee populations will be principally targeted for assistance under this program. The term "refugee" is defined in section 101(a)(42) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(42)].

These grants are made available in recognition of:

A. The severe strain on public resources in high impact areas represented by the influx of refugees.

B. Gaps in meeting the health needs of refugees through other forms of Federal assistance.

C. The need for State level coordination of public health programs, general health assessments, and referrals for medical, mental, dental, rehabilitative, and social services.

D. The need to intensify and maintain outreach efforts to improve upon the number of refugees starting and completing tuberculosis preventive therapy.

Program Requirements

Background and Need

1. *Identification:* Develop and implement a system for the identification of all officially arriving refugees. Notification forms received from CDC port of entry quarantine stations will be used to determine primary refugee arrivals. The system will also include a mechanism for identifying secondary refugee arrivals, with priority given to recent arrivals in the United States who have not received an initial health assessment in their area of previous residence.

2. *Contacting Refugees:* Identified officially arriving refugees will be contacted shortly after arrival and offered a health assessment. The importance of receiving a health assessment and where and how to get to a convenient health care provider will be carefully explained, whenever possible in the language spoken by the refugee. Efforts to contact the refugees should include:

a. Close coordination with voluntary agencies (VOLAGS) and other service agencies.

b. Assisting the refugees to overcome any special barriers to receiving the health assessment, e.g., lack of transportation.

3. *Health Assessments:* Provide and/or coordinate the provision of a health assessment to officially arriving refugees and identified secondary migrants who have not previously received a health assessment. Priority should be given to Class A and Class B designated refugees. The components of the health assessment may include the following:

a. Screening for tuberculosis, including a tuberculosis skin test and a chest X-ray if a recent one is not available;

b. Public health history and review of current problems, including immunization needs;

c. Screening for hepatitis B;

d. Testing for intestinal parasites;

e. Physical examination including:

(1) Oral inspection for dental problems;

(2) Height and weight measurement to assess pediatric nutritional status;

(3) Vision and heating testing; and

(4) Complete physical examination.

4. *Referrals for Health Problems:* Refugees with health problems identified during the health assessment should be referred to the appropriate health care provider for treatment. A system for follow-up should be established to ensure appointments are kept and should be based on the priority of the condition identified.

5. *Health Education:* In order for the refugees to be successfully assimilated into the public health care system, the importance of preventive health must be taught as part of the health assessment process. Refugees should be educated as to what specific tests they are receiving and why and what the results of the tests mean. The need for obtaining additional care, testing, and/or treatment for an identified health problem should be carefully explained to them in their own language. Educational pamphlets, slides or videos, and individual/group education sessions may be utilized to accomplish this. The applicant may also want to provide or coordinate the provision of culturally sensitive training for staff working with refugees.

6. *Coordination with Other Agencies/Organizations:* To promote the national goals and utilize all existing resources to this end, special emphasis should be placed on coordinating efforts with:

a. Voluntary agencies (VOLAGS);

b. Mutual assistance agencies (MAA);

c. State Department of Social Services;

d. State Advisory Council on Refugee Affairs; and

e. Other State and federally funded programs, such as Medicaid, and health department immunization and tuberculosis control programs.

Application Content

Each new or competing applications should contain a program narrative which addresses each of the following points: (1) The need for project grant support; (2) a description of the public health problems peculiar to the health of refugees, how the funding will be targeted to that problem, and the expected results; (3) descriptions of alternative funding available from State, local, and private sources; (4) quarterly reports on progress in improving refugee health; (5) how refugees will be integrated into existing health services; (6) long- and short-term objectives which are specific, measurable, and time phased; (7) an extensive description of the activities that will be undertaken to accomplish those objectives, including the timing of such actions, (8) the methods which will be employed to evaluate program activities; (9) a budget request and accompanying justification; and (10) any other information which will support the request for grant assistance.

Evaluation Criteria

New or competing continuation applications will be reviewed and evaluated according to the following criteria:

A. Need for support, (40 points) including:

1. The size of the refugee population, including secondary migrants;

2. The extent and distribution of unique refugee health problems;

3. The extent and distribution of general refugee health problems; and

4. The relationship of the project to existing services.

B. The extent to which the applicant contributed its own funds in FY 1989, if any, and the projected contribution increase during the project period. (20 points)

C. The extent to which project objectives are specific, measurable, time-phased, and related to the National Program Goals. (15 points)

D. The quality of the applicant's plan for conducting project activities described in the program description, including the extent to which the planned program is consistent with the State Refugee Resettlement Plan and the extent to which refugees will be integrated into existing health services. (20 points)

E. The extent to which methods for evaluating the project's effectiveness are reasonable and appropriate. (5 points)

The level of funding will be based on the appropriateness and reasonableness of the budget request, the number of new arrivals, proposed use of project funds, the extent to which the applicant is contributing its own resources, and the availability of funds. This allocation will also consider past performance, program potential, plans to provide tuberculosis preventive therapy and outreach services, and any supporting information on secondary migration which can be provided by grant applicants.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Other Reviews

The State Refugee Resettlement Coordinator should have an opportunity to review and comment on the application prior to its submission.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.987, Health Programs for Refugees.

Application Submission and Deadline

The original and two copies of the application (PHS Form 5161–1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305 on or before April 13, 1990.

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications: Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other materials may be obtained from Rose Belk, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6640 or FTS 236–6640.

Announcement Number 019, "Project Grants—Health Programs for Refugees," must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Richard D. Moyer, Chief, Medical Screening and Health Assessment Branch, Health Programs for Refugees, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639–2784 or FTS 236–2784 or through the appropriate HHS Regional Office, Director, Division of Preventive Health Services.

Dated: March 27, 1990.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90–7434 Filed 3–30–90; 8:45 am]

BILLING CODE 4160–18–M

[Announcement 018]

Cooperative Agreements for Minority Community-Based Human Immunodeficiency Virus Prevention Projects Program; Announcement and Availability Funds for Fiscal Year 1990; Correction

A notice announcing the availability of Fiscal Year 1990 funds for cooperative agreements for Human Immunodeficiency Virus (HIV) prevention projects for minority community-based organizations (CBOs) serving populations at risk of HIV infection and acquired immunodeficiency syndrome (AIDS) was published in the **Federal Register** on Friday, March 16, 1990 (55 FR 9955). The notice document (90–6217) beginning on page 9955 in the issue of Friday, March 16, 1990, is corrected as follows:

1. On page 9955, in the second column, in the first line under the section "Eligible Applicants," insert "nongovernmental" before "nonprofit."

2. On page 9955, in the second column, in the first paragraph, under the section "Eligible Applicants," following the first sentence, insert the following: "For purposes of this announcement, a nongovernmental organization is a private nonprofit organization, a quasi-public organization, a public or private institution of higher education, a public or private hospital, an Indian tribe, or an Indian tribal organization which is not a federally recognized Indian tribal government."

All other information and requirements of the March 16, 1990, notice remain the same.

Dated: March 27, 1990.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90–7435 Filed 3–30–90; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 53 FR 32890, February 2, 1988), is amended to reflect the creation of an office in the Food and Drug Adminstration.

FDA is proposing to create an Office of Biotechnology in the Immediate Office of the Commissioner to enable FDA to meet the new challenges presented by advances in the area of biotechnology.

Section HF–B Organization and Functions is amended as follows:

1. Add a new subparagraph (a–5) Office of Biotechnology (HFA–H) reading as follows:

(a–5) *Office of Biotechnology (HFA–H).* Advises and assists the Commissioner and other key officials on scientific issues which have an impact on biotechnology policy, direction, and long-range goals.

Represents the Agency on biotechnology matters to other government agencies, State and local governments, industry, academia, consumer organizations, Congress, national and international organizations, and the scientific community.

Provides leadership and direction on biotechnology matters through an Agencywide coordinating committee whose purpose is to promote communication and consistency on biotechnology matters across organizational lines.

Advises the Commissioner on the needs, design, and location of biotechnology facilities and participates with other Agency components in the planning of such facilities.

Serves as the focal point for overall management of Agency biotechnology research, training, contracts, and fellowship activities.

Provides leadership and direction on biotechnology matters.

Evaluates the adequacy of biotechnology resources available to the Agency and initiates action as appropriate to enhance the Agency biotechnology posture.

Coordinates and provides guidance on cross-cutting and controversial biotechnology program policies

involving the Agencywide coordinating committee.

Provides leadership to Agency components in the identification, recruitment, and retention of top level scientists to fill vacancies for key Agency biotechnology positions.

Dated: March 12, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-7383 Filed 3-30-90; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revised; *Title of Information Collection:* Integrated Review Schedule (Medicaid Eligibility Quality Control); *Form Numbers:* HCFA-301; *Frequency:* Monthly; *Respondents:* State/local governments; *Estimated Number of Responses:* 37,000 Medicaid Assistance Only (MAO) and 65,192 Aid to Families with Dependent Children (AFDC); *Average Hours per Response:* .65 (MAO) and .1 (AFDC); *Total Estimated Burden Hours:* 30,569 (reporting) and 20,374 (recordkeeping) for a total of 50,943 hours.

2. *Type of Request:* Revision; *Title of Information Collection:* Attending Physician's Certification of Medical Necessity for Home Oxygen Therapy; *Form Number:* HCFA-484; *Frequency:* On occasion; *Respondents:* Small businesses/ other for profit; *Estimated Number of Responses:* 600,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 150,000.

3. *Type of Request:* Reinstatement; *Title of Information Collection:* Licensure Forms for the Clinical Laboratory Improvement Act; *Form Number:* HCFA-200-209; *Frequency:* Annually; *Respondents:* Small businesses/organizations; *Estimated Number of Responses:* 7,404; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 1,851.

4. *Type of Request:* Revision; *Title of Information Collection:* Request for Medical Review Information for Part B Intermediary Outpatient Rehabilitation Bills; *Form Number:* HCFA-700, 701, 702; *Frequency:* On occasion; *Respondents:* Businesses/other for profit, non-profit institutions, and small businesses/ organizations; *Estimated Number of Responses:* 450,000; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 112,500.

5. *Type of Request:* New; *Title of Information Collection:* Information Collection Requirements in BPD-302, Medicare Secondary Payor; *Form Number:* HCFA-R-136; *Frequency:* On occasion; *Respondents:* Individuals/ households and businesses/other for profit; *Estimated Number of Responses:* 11,845,835; *Average Hours per Response:* .033; *Total Estimated Burden Hours:* 394,834 (reporting) and 267,030 (recordkeeping) for a total of 661,864 hours.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 23, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-7459 Filed 3-30-90; 8:45 am]

BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines. The Commission advises the Secretary, HHS, and was established by Title XXI of the Public Health Service Act, enacted by Public Law 99-660 as amended by Public Laws 100-203, 100-360 and 101-239.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Havill, Commission Principal Staff Liaison at (301) 443-6593.

DATES: Nominations are to be submitted by May 15, 1990.

ADDRESSES: All nominations are to be submitted to the Administrator, Vaccine Injury Compensation Branch, Office of Quality Assurance and Liability Management, Bureau of Health Professions, Health Resources and Services Administration (HRSA), room 7-90, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Under the authorities that established the Advisory Commission on Childhood Vaccines, viz., the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463) and section 2119 of the Public Health Service Act, 42 U.S.C. 300aa-19, as added by Public Law 99-660 and amended by Public Laws 100-203, 100-360 and 101-239, HRSA is requesting nominations for three voting members of the Commission.

The Commission advises the Secretary on the implementation of the National Vaccine Injury Compensation Program; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

The Commissiion consists of nine members appointed by the Secretary as follows: Three health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom two are pediatricians; three members from the general public, of whom two are legal representatives of children who

have suffered a vaccine-related injury or death; and three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and one of whom is an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control, and the Commissioner of Food and Drugs (or the designees of such officials), serve as non-voting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the Commission representing (1) a health professional with special experience in childhood diseases; (2) a member from the general public who is a legal representative of a child who has suffered a vaccine-related injury or death; and (3) an attorney. (As stated above, this category requires membership of three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and one of whom is an attorney whose specialty includes representation of vaccine manufacturers. By this notice, the Department is soliciting nominations for the third attorney position.) Nominees will be invited to serve three-year terms beginning January 1, 1991, and ending December 31, 1993.

Interested persons may nominate one or more qualified persons for membership on the Advisory Commission. Nominations shall state that the nominee is willing to serve as a member of the Commission and appears to have no conflict of interest that would preclude Commission membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest. A curriculum vitae should be submited with the nomination.

The Department has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and therefore extends particular encouragement to nominations for appropriately qualified female, minority or physically handicapped candidates.

Dated: March 27, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90-7496 Filed 3-30-90; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council on Nurses Education; Meeting Cancellation

In Federal Register Document 90-6230 appearing on page 10117 in the issue for Monday, March 19, 1990, the April 2, 1990, meeting of the "Council on Graduate Medical Education" will be cancelled.

Dated: March 27, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90-7384 Filed 3-30-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute; Amended Notice of Meetings

Notice is hereby given to amend the meeting notice for the Subcommittee on Cancer Centers, National Cancer Advisory Board, National Cancer Institute, to be held on April 17 and on April 30 which was published in the Federal Register (55 10297) on March 2, 1990.

This notice is being amended to notify the public that the purpose of these meetings will be to gather and develop information to be used in the formulation of a 5-Year Plan for Cancer Centers. The public is encouraged to submit all ideas and viewpoints important for the Subcommittee to consider in developing this plan to Dr. Brian Kimes, Executive Secretary, National Cancer Institute, National Institutes of Health, Executive Plaza-North, Room 300, Bethesda, Maryland 20892 (301-496-8537). It will be necessary for Dr. Kimes to receive any comments at least two days in advance of the date of each of these meetings.

Dated: March 26, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-7424 Filed 3-30-90; 8:45 am]

BILLING CODE 4140-01-M

Office of Human Development Services

Fiscal Year 1991 Federal Allotment to States for Developmental Disabilities Basic Support and Protection and Advocacy Formula Grant Programs

AGENCY: Administration on Developmental Disabilities, Office of Human Development Services.

ACTION: Notification of Fiscal Year 1991 federal allotment for States for developmental disabilities basic support and protection and advocacy formula grant programs.

SUMMARY: This notice sets forth the individual allotment for States for Fiscal Year 1991 pursuant to section 125 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotments for the States published herein are based upon the Fiscal Year 1990 funding levels, and are contingent upon Congressional appropriation action for Fiscal Year 1991. If Congress appropriates and the President approves an amount different from the Fiscal Year 1990 funding level, adjustments will be made accordingly. For example, should the funding level change, the statutory minimum funding provision would require changes to the percentages for individual States.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Bettye Mobley, Chief, Formula Grants Management Branch, Division of Grants and Contracts Management, Office of Human Development Services, Department of Health and Human Services, 200 Independence Avenue SW, room 341-F, Washington, DC 20201, telephone (202) 245-7220.

SUPPLEMENTARY INFORMATION: Section 125(a)(2), of the Act requires that adjustments in the amounts of State allotments may be made not more often than annually and that States are to be notified not less than six (6) months before the beginning of any fiscal year of any adjustments to take effect in that fiscal year.

The Administration on Developmental Disabilities has updated the data for issuance of Fiscal Year 1991 formula grants. The data elements used in the update are:

A. The Number of Beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program, December 1988, are from Table 5.J10 of the "Social Security Bulletin: Annual Statistical Supplement 1989" issued by the Social Security Administration, U.S. Department of Health and Human Services. The numbers for the Northern Mariana Islands and the Trust Territories of the Pacific Islands, included under 'Abroad' in the Table, were obtained from the Social Security Administration.

B. State data on Average Per Capita Income, 1986-88, are from Table 1, page 34, of the "Survey of Current Business", August 1989, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from that Bureau; and

C. State data on Total Population as of July 1, 1988, are from Table 1 of "Current Population Reports: Population Estimates and Projections," Series P–25, Number 1044, issued August 1989 by the Bureau of the Census, U.S. Department of Commerce. The Working Population (ages 18–64) were from Table 6 of Series P–25, Number 1044. The Territories data on population are from Current Population Report P–25, No. 1049 issued October 1989. The Territories Working Populations were obtained from Bureau of Census.

FISCAL YEAR 1991 FEDERAL ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Basic Support	Protection and Advocacy
Total	$61,939,123	$20,483,898
Alabama	$1,219,132	$365,426
Alaska	350,000	200,000
American Samoa	200,000	107,000
Arizona	735,101	238,410
Arkansas	708,117	212,357
California	5,051,662	1,516,329
Colorado	617,050	213,618
Connecticut	582,339	201,303
Delaware	350,000	200,000
District of Columbia	350,000	200,000
Florida	2,555,414	766,883
Georgia	1,517,216	454,998
Guam	200,000	107,000
Hawaii	350,000	200,000
Idaho	350,000	200,000
Illinois	2,469,751	740,439
Indiana	1,359,658	407,755
Iowa	735,734	220,479
Kansas	554,164	200,000
Kentucky	1,123,757	336,786
Louisiana	1,297,729	389,174
Maine	350,000	200,000
Maryland	860,379	258,062
Massachusetts	1,160,927	347,763
Michigan	2,169,729	650,206
Minnesota	929,083	278,629
Mississippi	874,933	262,353
Missouri	1,224,941	367,272
Montana	350,000	200,000
Nebraska	377,659	200,000
Nevada	350,000	200,000
New Hampshire	350,000	200,000
New Jersey	1,373,929	411,778
New Mexico	410,615	200,000
New York	3,744,205	1,121,593
North Carolina	1,688,394	506,256
North Dakota	350,000	200,000
No. Mariana Islands	200,000	107,000
Ohio	2,634,878	789,818
Oklahoma	809,760	245,499
Oregon	615,960	204,504
Pennsylvania	2,905,548	870,632
Puerto Rico	3,055,187	912,995
Rhode Island	350,000	200,000
South Carolina	981,448	294,340
South Dakota	350,000	200,000
Tennessee	1,337,495	400,968
Texas	3,752,330	1,126,616
Trust Territories	274,754	107,000
Utah	458,193	200,000
Vermont	350,000	200,000
Virgin Islands	200,000	107,000
Virginia	1,275,858	382,518
Washington	939,555	282,030
West Virginia	670,554	215,636

FISCAL YEAR 1991 FEDERAL ALLOTMENT—ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Basic Support	Protection and Advocacy
Wisconsin	1,185,985	355,471
Wyoming	350,000	200,000

Dated: March 26, 1990.

Deborah L. McFadden,

Commissioner, Administration on Developmental Disabilities.

Approved: March 28, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90–7580 Filed 3–30–90; 8:45 am]

BILLING CODE 4130–01–M

Public Health Service

Omnibus Budget Reconciliation Act of 1989; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary of Health, with authority to redelegate, all the authorities vested in the Secretary of Health and Human Services as follows:

1. Title IX of the Public Health Service Act, "Agency for Health Care Policy and Research," (42 U.S.C. 299 et seq.), as amended hereafter. (Section 6103 (a) and (c) of Pub. L. 101–239.)

2. Section 1142 of Title XI of the Social Security Act, "Research on Outcomes of Health Care Services and Procedures," (42 U.S.C. 1320b–12), as amended hereafter. (Section 6102(b) of Pub. L. 101–239.)

3. Section 6103(d)(2) of Public Law 101–239, "Contract for Temporary Assistance to Secretary with Respect to Health Care Technology Assessment," as amended hereafter.

This delegation excluded the authority to appoint the Administrator for Health Care Policy and Research. It also excluded the authority to promulgate regulations, to submit reports to the Congress, to establish advisory committees or national commissions, and to appoint members to such committees or commissions.

This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by you or one of your subordinates which, in effect, involved the exercise of the authorities delegated prior to the effective date of the delegation.

Dated: March 26, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–7457 Filed 3–30–90; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research; Statement of Organization, Functions and Delegations of Authority

Part H of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (42 FR 61317, December 2, 1977, as most recently amended at 54 FR 50536–37, December 7, 1989) is amended to reflect revisions in chapter H (Public Health Service) and to establish a new chapter HP (Agency for Health Care Policy and Research) which reflects the establishment of a new agency within the Public Health Service. The changes are, as follows:

1. Abolish the *National Center for Health Services Research and Health Care Technology Assessment (HAR)* within the Office of the Assistant Secretary for Health (OASH);

2. *Amend Part H, Chapter H, Section H–10. Public Health Service—Organization.* Add to the organization of the Public Health Service: *Agency for Health Care Policy and Research (HP);* and

3. *Under Part H, add Chapter HP (Agency for Health Care Policy and Research).*

Office of the Assistant Secretary for Health

Under Chapter HA, Section HA–10. Office of the Assistant Secretary for Health—Organization, delete item 11 and renumber items 12 through 20 as items 11 through 19.

Under Section HA–20. Office of the Assistant Secretary for Health (HA)—Functions, after the statement for the *Office of Scientific Integrity Review (HA4)* delete the titles and statements for the National Center for Health Services Research and Health Care Technology Assessment (HAR) in their entirety.

Public Health Service

Under Part H, after *Chapter HN (National Institutes of Health), add chapter HP (Agency for Health Care Policy and Research)* as follows:

Chapter HP—Agency for Health Care Policy and Research

Section HP-00. Mission. The Agency for Health Care Policy and Research provides national leadership and administration of a program to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services including: (1) The effectiveness, efficiency, and quality of health care services; (2) the outcomes of health care services and procedures; (3) clinical practice, including primary care and practice-oriented research; (4) health care technologies, facilities, and equipment; (5) health care costs, productivity, and market forces; (6) health promotion and disease prevention; (7) health statistics and epidemiology; (8) medical liability; (9) delivery of health care services in rural areas; and (10) the health of low-income groups, minority groups, and the elderly.

Section HP-10. Organization and Functions. The Agency for Health Care Policy and Research (AHCPR) is under the direction of an Administrator who reports to the Assistant Secretary of Health.

In carrying out these responsibilities, AHCPR engages in the following activities: (1) Supports, by means of grants and contracts with public and private entities, research, demonstration, and evaluation projects; (2) conducts economic and statistical analyses, research, demonstrations, and evaluations through the use of staff and facilities of the Agency; (3) administers and supports health services research training programs; (4) assists public and nonprofit private entities in meeting the costs of planning, establishing, and operating centers for multidisciplinary health services quality and effectiveness research, evaluations, and demonstrations; (5) facilitates development of guidelines, standards and parameters regarding the quality and effectiveness of health care and promulgates them to health services providers and health educational institutions; (6) advises the ASH and other PHS Agency Heads about findings of the Agency research programs and their potential implications for HHS programs; (7) facilitates linkages among existing data bases and the establishment of national data systems to support health services, technology, quality and effectiveness research; (8) in consultation with other units in PHS coordinates health services and health care technology research, evaluations, and demonstrations undertaken by the Agency; (9) consults with public and private organizations and individuals to identify the critical issues and problems to be addressed through the Agency's research programs; (10) publishes and disseminates the findings and the data obtained in the course of research and evaluation, and in the development of guidelines, standards, review criteria, evaluations, and demonstrations supported or undertaken by the Agency; (11) undertakes programs to develop new and improved methods for making such research findings available to the medical community and for incorporating them into everyday medical practice; (12) provides technical assistance, advice, and consultation to organizations and individuals within and outside the Department engaged in or concerned with the results of health services health care technology health quality and effectiveness research, evaluations, and demonstrations; and (13) advises the Secretary on effectiveness of health care technologies and coverage thereof under Medicare and Medicaid as appropriate; (14) undertakes and supports research, demonstration projects and evaluations concerning rural health and undeserved populations; and (15) conducts patient outcome research as required under Section 1142 of the Social Security Act.

Office of the Administrator (HPA). Provides executive direction for all the activities of the Agency for Health Care Policy and Research. Specifically, the Administrator: (1) Oversees and directs the formulation of policies and program objectives for the Agency; (2) oversees, directs, coordinates, and evaluates the research programs, demonstration, dissemination and evaluation activities; (3) provides analyses and periodic and special reports that describe, integrate, and assess the results of research, evaluations, and demonstrations undertaken and support by the Agency to assist in the formulation of health policy; (4) participates in the planning and budgeting processes of PHS and the Department; (5) maintains liaison and coordinates research projects with public and private, non-profit organizations; and mandated information exchange with the National Library of Medicine as carried out through an interagency agreement; (6) oversees, coordinates, and evaluates agency efforts to improve and expand the fields of health services and health care technology assessment research; (7) in consultation with other units in PHS coordinates health care services research and health care policy research efforts undertaken by the agency; (8) oversees and directs the response to inquiries received by the Agency and clearance of documents dealing with matters of internal policy; (9) directs and coordinates Agency activities in support of Equal Employment Opportunity programs; and (10) serves as a scientific and technical advisor to the Assistant Secretary for Health and the Office of the Secretary on matters related to health services, health care technology, quality and effectiveness research; (11) promotes the development and application of appropriate health care technology and consults with other federal agencies, department as appropriate; (12) advises the Secretary regarding reimbursement for specific technologies; and (13) evaluates alternative services and procedures concerning technologies.

Office of Planning and Resource Management (HPA2). The Office serves as the Agency's focal point for program planning, reporting, evaluation, contracts, grants, administrative management and administrative services activities. This includes the development and dissemination of program objectives, alternatives and policy positions. Specifically, the Office: (1) Stimulates, guides and coordinates short and long term program planning, reporting and evaluation activities of the Agency; (2) provides staff services to the Agency for program planning in relation to the budgetary process, the development of issue papers and congressional reports; (3) coordinates the development, clearance, and dissemination of legislation, legislative implementation plans, regulations, **Federal Register** notices, and operating procedures; (4) develops and maintains effective linkages with State and local government organizations and with the research community and other potential users of the Agency's research; (5) provides administrative support to the Advisory Council for Health Care Policy, Research, and Evaluation; (6) administers the peer review process on behalf of the research components of the Agency; and (7) provides administrative management support for Center activities.

Office of Science and Data Development (HPA3). The Office serves as the Agency's focal point for leadership, advice, and coordination relating to the formation of science policy and the development and use of health care data research. In the context of research to enhance the quality, appropriateness and effectiveness of health care services the Office: (1)

Initiates, coordinates, and conducts studies and analyses relating to science policy; planning, and evaluation of health care research and uses of health care data; (2) maintains liaison with other Government and non-government entities including the scientific community and the health policy decisionmakers for the purpose of developing, with respect to health care data as they relate to medical effectiveness, uniform definitions, common reporting formats and linkages, standards to assure security, confidentiality, accuracy, and appropriate maintenance of such data; (3) provides advice and consultation to the Administrator on the Agency's research programs and other health care service delivery and effectiveness research activities involving health care data; and (4) provides guidance to the Administrator on the evaluation of health care data sets, linkages, research methods, and analyses.

Office of the Forum for Quality and Effectiveness in Health Care (HPA4). The Office is the focal point for promoting the quality, appropriateness and effectiveness of health care by arranging for the development and periodic review and updating of: clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively be prevented, diagnosed, treated, and managed clinically; and standards of quality, performance measures, and medical review criteria through which health car providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care.

Specifically, the Office: (1) Provides advice concerning priorities for outcomes research and demonstration programs of the Medicare and Medicaid programs; (2) convenes panels of appropriately qualified experts and consumers to develop the standards and criteria used in the creation of guidelines; (3) identifies specific clinical conditions and specifies the priority of these conditions for guidelines development; (4) identifies specific aspects of health care for which guidelines are needed; (5) identifies research which evaluates the outcomes of health care services and procedures and promotes the utilization of guidelines; (6) promotes and supports, in conjunction with the Center for Research Dissemination and Liaison, the dissemination of the guidelines through organizations representing providers, consumers, peer review organizations, accrediting bodies and other appropriate entities; (7) conducts and supports pilot testing of guidelines; and (8) conducts and supports evaluation of the extent to which the guidelines have had an effect on the clinical practice of medicine.

Office of Health Technology Assessment (HPA5). The Office provides national leadership, coordination and administration of a comprehensive program for health care technology assessment and transfer to improve the quality, and reduce the cost of medical care. The Office: (1) Identifies and establishes priorities for the critical technologies to be assessed in coordination with other relevant public and private organizations; (2) administers a program of assessments of health care technology which take into account their safety, efficacy, cost effectiveness, and social, ethical and economic impacts; (3) makes recommendations to the Administrator respecting health care technology issues, including preparation of the PHS position with respect to whether specific technologies should be reimbursable under Medicare and federally financed health programs; (4) provides technical assistance and consultation to organizations and individuals within and outside the Department engaged in or concerned with the results of health care technology assessments, research, evaluations, and demonstrations; and (5) coordinates PHS research, evaluations and demonstrations respecting the assessment of health care technology undertaken and supported by DHHS components.

Center for Medical Effectiveness Research (HPB). The Center plans and manages a program of health services research to enhance the outcomes, effectiveness, and appropriateness of health care services and procedures. The Center: (1) Establishes priorities with respect to the health conditions and procedures to be studied; (2) determines the structure and content of research studies on medical treatment outcomes and effectiveness to be supported by grants or contracts; (3) supports the development of methodologies for use in outcomes research; (4) develops and administers a program to monitor those research studies; (5) develops and promotes the use of uniform standards and formats in the collection and maintenance of information on the outcomes of health care services and procedures; (6) synthesizes research findings and evaluates their impact on medical practices; (7) supports the establishment of new data bases for use in outcome and effectiveness research; (8) analyzes program operations to ensure responsible administration of resources allocated for research; (9) participates with the Center for Research Dissemination and Liaison in the timely and effective dissemination of research findings; (10) provides a summary of findings of current research projects and informs the Office of Planning and Resource Management, the Office of the Forum for Quality and Effectiveness in Health Care, the Office of Science and Data Development, and the Office of Health Technology Assessment of results that might affect health policy and legislation; and (11) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in medical effectiveness research and related health services research.

Center for General Health Services Intramural Research (HPC). Provides professional expertise required by the Center to undertake health services and health care technology research, demonstration, and evaluation activities. Specifically: (1) Designs and carries out research, demonstration, and evaluation projects which address the critical issues and research questions identified in the research plan of the Agency; (2) provides information, analyses, and technical support to the Center for Health Services Extramural Research with regard to the structure and content of contracts awarded by the Agency and the monitoring of grants; (3) provides consultation and technical assistance to the Office of the Assistant Secretary for Health and the Department with regard to the development, experimental design, management, and interpretation of research projects; (4) prepares and participates in the coordination with the Center for Dissemination and Liaison dissemination of reports which describe and analyze the findings of research, demonstration, and evaluation projects undertaken by the Agency; (5) analyzes program operations to ensure responsible administration of resources allocated for intramural research; (6) provides a summary of findings of current intramural research projects and informs the Office of Planning and Resource Management, Office of the Forum for Quality and Effectiveness and the Office of Health Care Technology Assessment of results that might affect health policy and legislation; and (7) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in health services and health care technology research activities.

Center for General Health Services Extramural Research (HPE). Plans and manages health services and health care technology research, demonstration, and evaluation activities supported by means of grants and contracts. Specifically: (1) Determines the structure and content of research studies supported by contract which address the critical issues and research questions identified in the research plan of the Agency; (2) develops and administers a program to monitor research studies supported by grants or contracts; (3) provides general guidance and assistance to groups and individuals seeking support for research, demonstration, or evaluation projects; (4) participates in the preparation of periodic reports which describe, analyze, and integrate the results of various research, demonstration, and evaluation projects supported by the Agency; (5) provides a summary of current extramural studies and informs the Office of Planning and Resource Management, the Office of Health Technology Assessment, and the Office of the Forum for Quality and Effectiveness in Health Care of results that might affect health policy and legislation; and (6) maintains liaison with professional and scientific organizations, foundations, and other groups engaged in health services research, demonstration, and evaluation activities.

Center for Research Dissemination and Liaison (HPG). Serves as the Agency's focal point for disseminating the findings of health services, quality and effectiveness, and health care technology research, and the policies and guidelines developed by the Agency. This is carried out through publications, education, training and liaison with public and private organizations. The Office: (1) Synthesizes, publishes, and disseminates to the public the data and research findings resulting from the activities of the Agency; (2) develops syntheses of research findings focused on particular issues dealing with policy concerns and operational problems; (3) plans and conducts conferences with public and private organizations; (4) formulates, in collaboration with Agency staff, appropriate policies and activities to develop effective linkages with potential users of health service research; (5) conducts the Agency's public affairs activities; (6) communicates information regarding user research needs to the Administrator and appropriate Agency staff to assure user needs are adequately addressed in current and planned Agency intramural and extramural projects; (7) develops and implements mechanisms to identify and contact potential users; (8) develops and maintains effective relationships with the general print and electronic media, the various publications representing the health providers and health industries, and consumers; (9) plans meetings and coordinates contracts between Agency staff and individual users and representatives of user groups and organizations; and (10) provides assistance and advice to other Federal agencies and organizations in evaluating the utility of Federally-supported research to State and local government officials.

Section HP–30. Delegations of Authority. All delegations and redelegations of authority made to National Center for Health Services Research and Health Care Technology Assessment officials which were in effect immediately prior to this reorganization, and which are consistent with the reorganization, shall continue in effect pending further redelegation.

Dated: March 26, 1990.

Louis W. Sullivan,

Secretary.

[FR Doc. 90–7458 Filed 3–30–90; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–90–3052]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 21, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Secretary's Discretionary Fund, Technical Assistance Program: Evaluation Questionnaire.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The form will be used to solicit comments on contract performacne from participants receiving technical assistance from contract awards in the Secretary's Discretionary Funds, Section 107, Technical Assistance Program. Participants comments will be used to alert the contract GTR to emerging contract problems needing corrections during the contract period and for future contract selections. Respondents will be recipients of technical assistance provided by HUD contractors to CDGB and UDAG grantees.

Form Number: HUD–40011, 40011.1.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Questionnaire	2,400		1		0.17		800

Total estimated burden hours: 800.

Status: Revision.

Contact: Edward P. Winkler, HUD, (202) 755–6032, John Allison, OMB, (202) 395–6880.

Dated: March 21, 1990.

Proposal: Public Housing Construction Report.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: These reports enable the Department to identify problem areas and/or inadequacies of a public housing project under construction so corrective action can be taken in a timely manner.

Form Number: HUD–5378.

Respondents: State or Local Governments and Non-Profit-Institutions.

Frequency of Submission: Semimonthly.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
HUD–5378	158		24		.15		568
Recordkeeping	3,792		1		.04		152

Total Estimated Burden Hours: 720.

Status: Reinstatement.

Contact: William Thorson, HUD, (202) 755–6460, John Allison OMB, (202) 395–6880.

Dated: March 21, 1990.

Proposal: PHA-Owned or Leased Projects; Maintenance and Operation; Tenant Allowances for Utilities.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The rule requires PHAs to maintain records on criteria and procedures used in establishing tenant allowances for utilities. PHAs are required to establish reasonable utility allowances. The Department requires PHAs to maintain records for possible court challenges.

Form Number: None.

Respondents: Individuals or Household and Non-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Recordkeeping	2,000		1		4		8,000

Total Estimated Burden Hours: 8,000.

Status: Reinstatement.

Contact: Charles Ashmore, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.

Dated: March 21, 1990.

Proposal: Request for Insurance Endorsement Under the Direct Endorsement Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Direct Endorsement Program permits mortgage lenders to underwrite the applications for mortgage insurance and close mortgage loans without prior HUD review. Lenders then submit the closing package to the Department with a request for insurance endorsement.

Form Number: None.

Respondents: Businesses of Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
HUD–54111	4,800		125		0.167		99,600

Total Estimated Burden Hours: 99,600.

Status: Extension.

Contact: Richard Harrington, HUD, (202) 755–5676, John Allison, OMB, (202) 395–6880.

Dated: March 21, 1990.

[FR Doc. 90–7455 Filed 3–30–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. 90–3053]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 22, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: 24 CFR 913, Definition of Income, Income Limits, Rent and Re-Examination of Family Income for the Public and Housing Programs.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: Public Housing Authorities and Indian Housing Authorities may request exceptions from the Department to permit families with incomes greater than 50 percent of the area median to reside in assisted units which are available after October 1, 1981. HUD will authorize exceptions to the extent available on the basis of these requests.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	X	Frequency of response	X	Hours per response	=	Burden hours
Annual reporting	280		1		1		280

Total Estimated Burden Hours: 280.

Status: Extension.

Contact: Edward C. Whipple, HUD, (202) 426–0744, John Allison, OMB, (202) 395–6880.

Dated: March 22, 1990.

[FR Doc. 90–7456 Filed 3–30–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–90–914]

Office of the Regional Administrator, Regional Housing Commissioner; Acting Manager, Region IV (Atlanta) Designation for Orlando Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Orlando Office.

EFFECTIVE DATE: November 9, 1990.

FOR FURTHER INFORMATION CONTACT: H.E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, room 634, Richard B. Russell Federal Building, 74 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–331–5199.

Designation of Acting Manager for Orlando Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Mortgage Credit Branch
3. Chief, Valuation Branch
4. Chief, Loan Management and Property Disposition Branch

This designation supersedes the designation effective February 25, 1987, (52 FR 17483, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of Novembr 9, 1989.

M. Jeanette Porter,

Manager, Orlando Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 90–7430 Filed 3–30–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–90–915 FR–2792]

Office of the Assistant Secretary for Public and Indian Housing

Acting Assistant Secretary for Public and Indian Housing; Designation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Designation of order of succession.

SUMMARY: This designation lists the order of officials to serve as Acting Assistant Secretary for Public and Indian Housing during any absence,

disability, or vacancy in the position of Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: March 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mildred Hamman, Office of Public and Indian Housing, Department of Housing and Urban Development, 451–7th Street, SW., Washington, DC 20410, telephone (202) 755–5846. (This is not a toll-free number). Designation of Acting Assisant Secretary for Public and Indian Housing.

Section A. Designation. During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public and Indian Housing is not available to exercise the powers and perform the duties of the Assistant Secretary, appointees to the positions listed below are authorized to act as Assistant Secretary and exercise all the powers, functions, and duties assigned to or vested in the Assistant Secretary. However, no official shall act as Assistant Secretary until all of the appointees listed before such official's title in this designation are unable to act by reason of absence, disability, or vacancy in office.

(1) General Deputy Assistant Secretary for Public and Indian Housing;

(2) Director, Office of Public Housing;

(3) Director, Office of Indian Housing;

(4) Director, Office of Resident Initiatives.

Section B. Authorization. Each head of an organizational unit of Public and Indian Housing is authorized to designate an employee under his or her jurisdiction to serve as acting head during the absence of the head of the unit. An official serving in an acting position under this section does not hold that position for purposes of the order of succession set forth in Section A.

Section C. Functions. An official serving in an acting capacity under this designation shall have all the powers, functions, and duties assigned to such position.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 21, 1990.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 90–7428 Filed 3–30–90; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal-State Compacts Approval; Class III (casino) Gambling: Ft. Mojave Tribe—Nevada et al.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compacts.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State Compacts for the purposes of engaging in Class III (casino) gambling on Indian reservations. The Secretary of the Interior has approved Tribal-State Compacts between the following tribes and states: The Ft. Mojave Tribe and the State of Nevada, executed on 10/15/87; the Cabazon Band of Mission Indians and the State of California, executed on 10/3/89; the Grand Portage Band of Lake Superior Chippewa Reservation and the State of Minnesota, executed on 10/24/89; the Bois Fort Band of Lake Superior Chippewa Reservation and the State of Minnesota, executed on 12/11/89; the Fond Du Lac Band of Lake Superior Chippewa Reservation and the State of Minnesota, executed on 11/1/89; the Lower Sioux Community Reservation and the State of Minnesota, executed on 11/27/89; the Shakopee Mdewakanton Sioux Community Reservation and the State of Minnesota, executed on 12/4/89, and the Prairie Island Sioux Community Reservation and the State of Minnesota, executed on 11/15/89.

ADDRESSES: Office of Legislative Affairs, Bureau of Indian Affairs, Department of the Interior, MS–4641, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joel Starr, Bureau of Indian Affairs, Washington, DC., (202) 343–5706; Michael Cox, Office of the Solicitor—Indian Affairs, Washington, DC., (202) 343–9331.

Dated: March 27, 1990.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 90–7481 Filed 3–30–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–010–00–4980–10–4779]

Boise District Advisory Council; Meeting

AGENCY: Boise District, Bureau of Land Management, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Advisory Council will meet April 19 to discuss the Air Force's Draft Environmental Impact Statement on the Realignment of Mountain Home Air Force Base and the Proposed Expansion of the Saylor Creek Range. The council will also discuss the status of the Owyhee Resource Management Plan. The meeting is open to the public and a comment period will be held at 1:00 pm.

DATES: The meeting will begin at 8:30 a.m. on Thursday, April 19. It will be held in the district office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise District, BLM, 208–334–9661.

Dated: March 22, 1990.

Margaret Wyatt,

Acting District Manager.

[FR Doc. 90–7390 Filed 3–30–90; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–00–4212–14; N–50435]

Battle Mountain District; Tonopah Resource Area

AGENCY: Bureau of Land Management, Department of The Interior.

ACTION: Realty Action; Noncompetitive Sale of Federal Land in Esmeralda County, NV.

SUMMARY: In response to a request from the Esmeralda County Board of County Commissioners, the following described Federal lands have been identified as suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian

T. 2 S., R. 42 E.,
Sec. 33, NW¼NE¼NE¼, NE¼NW¼NE¼;
A parcel of land containing 20 acres.

Esmeralda County plans to use these lands for the development of the new Goldfield solid waste disposal site.

The lands are not required for any Federal purpose. Disposal is consistent

with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local plans have been identified. The grazing lessee will be given the two-year notification prescribed in section 402(g) of the Federal Land Policy and Management Act of 1976. Patent will be subject to the current grazing lease. Grazing will continue on these lands until February 28, 1999.

The purchaser agrees that he takes the real estate subject to the existing grazing use of the Colvin Cattle Company, holder of grazing authorization Number 6123. The privilege of the Colvin Cattle Company to graze domestic livestock on the real estate according to the conditions and terms of authorization Number 6123 shall cease on February 28, 1999. The purchaser is entitled to receive annual grazing fees from the Colvin Cattle Company in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale. The patent, when issued, will contain the following reservation to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests will be conveyed simultaneously in the patent.

Under no circumstances will these lands be sold sooner than 60 days after publication of this notice.

Segregation:

Upon publication of this Notice in the **Federal Register** the above-described Federal lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

Comments: For a period of 45 days from the date of publication of this Notice in the **Federal Register,** interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: March 20, 1990.

James Currivan,

District Manager.

[FR Doc. 90-7391 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-HC-M

[UT-020-00-4212-11; U-66588]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, recreation and public purposes (R&PP) act classification; Tooele County, Utah.

SUMMARY: The following public land in Tooele County, Utah has been found suitable for classification for lease to Wendover City for a cemetery site. The lands are to be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.).

T. 1 S., R. 19 W., Salt Lake Meridian,
Section 7, Lot 7 . . . . . containing 10 acres.

The lands are not needed for Federal purposes. An R&PP lease is consistent with current BLM land use planning, the Pony Express Resource Management Plan and would be in the public interest.

The lease when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All minerals reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

3. Lease shall not exceed 25 years, and will have the right of renewal.

4. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws except for lease under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed classification or lease of the lands to: District Manager, Salt Lake District, 2370 South 2300 West, Salt Lake City, Utah 84119.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Detailed information concerning this action is available for review at the Salt Lake District Office.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 90-7433 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-940-00-4520-12]

Filing of Plats of Survey; California

March 19, 1990.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in California.

EFFECTIVE DATES: Filing was effective at 10 a.m. on the date of submission to the California State Office Public Room.

FOR FURTHER INFORMATION CONTACT: Clifford Robinson, Branch Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), California State Office, 2800 Cottage Way, Sacramento, CA 95825, 916-978-4775.

SUPPLEMENTARY INFORMATION: The plats of Survey of lands described below have been officially filed at the California State Office, Sacramento, CA.

Mount Diablo Meridian, California

T. 31N., R. 5W.,—Survey of a portion of the center line of Swasey Drive in Sec. 7, (Group No. 1062) accepted February 21, 1990, to meet certain administrative needs of the Ukiah District, and Redding Resource Area Office.

T. 36N., R. 4W.,—Dependent Resurvey, (Group No. 811) accepted February 5, 1990, to meet certain administrative needs of the Shasta-Trinity National Forest.

San Bernardino Meridian, California

T. 16S., R. 21E.,—Retracement, and Metes-and-Bounds Survey, (Group No. 1055) accepted February 16, 1990, to meet certain administrative needs of the Bureau of Indian Affairs, Quechan Indian Nation and the General Services Administration, Region 9, San Francisco.

T. 17S., R. 7E.,—Dependent Resurvey, and Corrective Dependent Resurvey, (Group No. 999) accepted February 23, 1990, to meet certain administrative needs of the Bureau of Land Management, California Desert District, and El Centro Resource Area.

All of the above listed surveys are now the basic record for describing the lands for all authorized purposes. The surveys will be placed in the open files in the BLM, California State Office and will be available to the public as a matter of information. Copies of the surveys and related field notes may be

furnished to the public upon payment of the appropriate fee.

Patricia L. Porter,

Chief Public Information Section.

[FR Doc. 90-7392 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-00-4520-12]

Plat of Survey; Correction

March 2, 1990.

In notice document 90-1324 appearing on page 2158 in the issue of Monday, January 22, 1990, T. 17N., R. 9E., Mount Diablo Meridian, is corrected to read T.17N., R. 8.E., Mount Diablo Meridan.

All inquires relating to this notice should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2811, Sacramento, California, 95825.

Patricia L. Porter,

Chief, Public Information Section.

[FR Doc. 90-7393 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-40-M

MT-940-08-4520-11

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Plat of survey for the following described land accepted March 9, 1990, will be officially filed in the Montana State Office, Billings, Montana, effective 45 days after publication.

Principal Meridian, Montana

T. 3 S., R. 9 E.

The plat representing the dependent resurvey of portions of the Yellowstone Guide Meridian through Township 3 South, the north boundary, and subdivisional lines, Township 3 South, Range 9 East, Principle Meridian, Montana.

The triplicate original of the following described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If protest against this survey, as shown on this plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

This survey was executed at the request of the Forest Service.

EFFECTIVE DATE: March 19, 1990.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: March 22, 1990.

Robert W. Faithful IV,

Associate State Director.

[FR Doc. 90-7394 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Warner Sucker for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Warner sucker. This species occurs in the Warner Valley of south-central Oregon. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before June 1, 1990, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825, or Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232. Written comments and materials regarding the plan should be addressed to Mr. Gail Kobetich at the above Sacramento, California address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Sacramento, California address.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich at the above Sacramento, California address (telephone 916/978-4866 or FTS 460-4866).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Warner sucker is endemic to the Warner Valley of Lake County, Oregon. The principal causes of its decline in distribution and abundance are habitat modifications associated with the draining of wetlands and diversion of flows from tributary streams, the installation of barriers on tributary streams that impede passage by adult spawners, and predation by introduced game fishes. Recovery efforts for the Warner sucker will focus on improving access on the spawning tributaries, restoring degraded habitat conditions, reducing predation by introduced game fishes, and finding or creating isolated habitats within the native range into which Warner suckers can be reintroduced. Several public and private entities are cooperating in the Warner sucker recovery program, including the Bureau of Land Management, U.S. Forest Service, Oregon Department of Fish and Wildlife, Oregon State Police, and The Nature Conservancy.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 19, 1990.

William E. Martin,

Acting Regional Director.

[FR Doc. 90-7176 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Delaware Water Gap National Recreation Area Citizen's Advisory Commission; meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware Water National Recreation Area Citizens' Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: April 21, 1990.

Time: 9:00 a.m.

Location: Bushkill School Offices of the Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania.

Agenda: This is the first meeting of the Advisory Commission. The agenda will be devoted to organizational activities, including the election of officers, establishment of operating procedures, discussion of a future meeting schedule, and the identification of topics of concern. An opportunity for public comment to the Commission will be provided.

FOR FURTHER INFORMATION, CONTACT: Richard G. Ring, Superintendent; Delaware Water Gap National Recreation Area Bushkill, PA 18324; 717-588-2435.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizens' Advisory Commission was established by Public Law 100-573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the Recreation Area and its surrounding communities.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to The Delaware Water Gap National Recreation Area Citizens' Advisory Commission, P.O. Box 284, Bushkill, PA 18324. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Delaware Water Gap National Recreation Area located on River Road 1 mile east of U.S. Route 209, Bushkill, Pennsylvania.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 90-7474 Filed 3-30-90; 8:45 am,]

BILLING CODE 4310-70-M

Martin Luther King, Jr., National Historic Site Advisory Committee; Meeting

AGENCY: Martin Luther King, Jr., National Historic Site, NPS, Interior.

ACTION: Notice of Advisory Commission Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: April 11, 1990.

ADDRESS: The Martin Luther King, Jr., Center for Nonviolent Social Change, Inc., Freedom Hall Complex, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue NE., Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site and Preservation District. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. John Cox
Ms. Barbara Faga
Mrs. Christine King Farris
Mrs. Valena Henderson
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Rev. Joseph L. Roberts
Mrs. Coretta Scott King, Ex-Officio
Member, Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include the status of park development and interpretative activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at park headquarters for public inspection approximately 4 weeks after the meeting.

Dated: March 14, 1990.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 90-7473 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029-0090), Washington, DC 20503, telephone 202-395-7340.

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR 870.

OMB approval number: 1029-0090.

Abstract: Section 402 of the Surface Mining Control and Reclamation Act of 1977 requires fees to be paid to the Abandoned Mine Reclamation Fund by coal operators on the basis of coal tonnage produced. This information collection requirement is needed to support verification of the moisture deduction allowance. The information will be used by the regulatory authority during audits to verify that the amount of excess moisture taken by the operator is appropriate.

Bureau form number: None.

Frequency: On occasion.

Description of respondents: Coal Mine Operators.

Estimated recordkeeping time: 2 hours.

Annual responses: None.

Annual burden hours: 3,224.

Bureau clearance officer: Andrew F. DeVito 202-343-5954.

Dated: February 26, 1990.

Andrew F. DeVito,

Acting Chief, Regulatory Development and Issues Management.

[FR Doc. 90-7395 Filed 3-30-90; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

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:

Adolph Coors Company (also d/b/a Coors Brewing Company), 12th and Ford, Golden, Colorado 80401.

2. Wholly-owned subsidiaries which will participate in the operations and their states of incorporation are:

Subsidiary	State of incorporation
Cadco, Inc	Colorado.
Coors Biotech, Inc	Do.
Coors Distributing Co	Do.
Coors Energy Co	Do.
Graphic Packaging Corp	Do.
Coors Porcelain Co	Do.
Coors Transportation Co	Do.
Ford Street Management Corp	Do.
Golden Aluminum Co	Do.
Rocky Mountain Water Co., The	Do.
Wannamaker Ditch Co., The	Do.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7478 Filed 3-30-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 39-90]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Justice Management Division (JMD), proposes to establish a new system of records entitled "Employee Assistance Program (EAP) Treatment and Referral Records, JUSTICE/JMD-016." This system is established to enable JMD to provide assessment, counseling, and referral services to outside treatment facilities for those employees who are experiencing one or more of a variety of personal or work-related problems.

Title 5 U.S.C. 552(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system. Therefore, please submit any comments by May 2, 1990. The public, OMB and Congress are invited to send written comments to Roberta Gross, Director, Employee Assistance Program, Justice Management Division, Department of Justice, 10th and Pennsylvania Avenues, NW., Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: March 13, 1990.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/JMD-016

SYSTEM NAME:

Employee Assistance Program Treatment and Referral Records, JUSTICE/JMD-016.

SYSTEM LOCATION:

Justice Mangement Division, Department of Justice, 10th St. & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Offices, Boards and Divisions and, upon occasion, of the Bureaus of the Department (as listed at 28 CFR Part 0.1); United States Attorney organizations; and the Office of Justice Programs of the Department of Justice who have sought counseling or been referred to or for treatment through the EAP. To the limited degree that treatment and referral may be provided to family members of these employees, these individuals, too, may be covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records of employees (and in limited cases, employee family members) who have sought or been referred to the EAP for treatment or referral. Examples of data found in such records include: Notes and documentation of internal EAP counseling, records of treatment and counseling referrals, records of employee attendance at treatment and counseling programs, prognosis or treatment information, documents received from supervisors or personnel on work place problems or performance, home addresses and/or phone numbers, insurance data, supervisors' phone number, addresses of treatment facilities or individuals providing treatment, leave records, written consent forms and abeyance agreements (see below), information on confirmed unjustified positive drug tests, results from EAP treatment drug tests and identification data, such as sex, job title and series, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd, *et seq.* and 290ee, *et seq.*; 42 CFR Sec. 2, *et seq.*; Executive Order 12564, 5 U.S.C. 3301 and 7901; 44 U.S.C. 3101 and Pub. L. No. 100-71, Sec. 503 (July 11, 1987).

PURPOSE:

These records are to be used by EPA personnel in the execution of the counseling and rehabilitation function. They document the nature and effects of employee problems and counseling by the EAP and referral to, and progress and participation in, outside treatment and counseling programs and the rehabilitation process. These records may also be used to track compliance with agreements made to mitigate discipline based upon treatment (abeyance agreements).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Permissive disclosure, without individual consent, are as follows:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(b) To qualified personnel, in sanitized form, for the purpose of conducting scientific research management audits, financial audits, or program evaluations.

(c) When ordered by a court of competent jurisdiction.

(d) To report, under State law, incidents of suspected child abuse or neglect to appropriate State or local authorities.

(e) To the extent necessary to prevent harm to another person.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored in paper folders in locked file cabinets in accordance with 42 CFR 2.16.

RETRIEVABILITY:

Records are indexed and retrieved by identifying number or symbol, cross indexed to employee names.

SAFEGUARDS:

Records are kept in a secure room in locked file cabinets. Only the EAP Administrator or a designated staff member will access or disclose the records.

RETENTION AND DISPOSAL:

Records are retained for three years after the individual ceases contact with the counselor unless a longer retention period is necessary because of pending administrative or judicial proceedings. In such cases, the records are retained for six months after the case is closed. Records are destroyed by shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director, Employee Assistance Program, Justice Management Division, Department of Justice, 10th St. & Constitution Avenue, NW, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address all inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Make all requests for access in writing to the system manager identified above. Clearly mark the envelope and letter "Freedom of Information Act/Privacy Act Request." Provide the full name and notarized signature of the individual who is the subject of the record, the dates during which the individual was in counseling, any other information which may assist in identifying and locating the record, and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. The request should follow the record access procedure, listed above, and should state clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope "Freedom of Information Act/ Privacy Act Request."

RECORD SOURCE CATEGORIES:

Records are generated by EAP Personnel, referral counseling and treatment programs or individuals, the employee who is the subject of the record, personnel office and the employee's supervisor. In the case of drug abuse counseling, records may also be generated by staff of the Drug-Free Workplace Program and the Medical Review Officer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 90-7398 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on March 19, 1990 a proposed consent decree in *United States* v. *Alvin Laskin, et al.*, No. 490CV0483, was lodged with the United States District Court for the Northern District of Ohio. Pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States filed this action for the cleanup of the Laskin/Popular Oil Superfund Site ("Site"), located in Jefferson, Ashtabula County, Ohio, and for the recovery of costs expended by the United States in connection with the Site.

The proposed consent decree is entered into between the United States as plaintiff and 158 defendants that are among the parties potentially responsible for the contamination of the Site. It requires that 27 major Settling Defendants to finance and perform a remedial action at the Site that is estimated to cost in excess of $19,500,000. Among other features, the finally selected remedy that they will implement includes: (1) Construction of a ground water diversion trench to dewater the contaminated aquifer; (2) thermal treatment of quantities of soil, ash and debris from the broiler house area; (3) consolidation and capping of all other contaminated soils; and (4) remaining work required by prior Administrative Decision for incineration of contaminated soils and sludges to remove a source of contamination of the groundwater.

A small amount of dioxin-contaminated material will be stored temporarily at the Site. The determination regarding its final disposal has not yet been made, and liability regarding that final disposal is expressly not a part of the proposed consent degree. In order to ensure that remedial work can proceed without disruption, the proposed decree requires two Owner Settling Defendants, among other things, to provide site access and future use restrictions.

The proposed decree also requires the Settling Defendants to pay the first $350,000 in future oversight costs that EPA will incur, and all oversight costs incurred in excess of $1.75 million. Furthermore, these Settling Defendants will pay the United States for certain unreimbursed past costs that it has incurred in connection with the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Alvin Laskin, et al.*, DJ Ref. #90-11-3-38B. The proposed consent decree may be examined at the office of the United States Attorney, 1404 East Ninth Street, Cleveland, Ohio 44114, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the proposed consent degree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Any request for a copy of the decree, not including Exhibits or Settling Defendant signature pages, should be accompanied by a check in the amount of $7.10 for copying costs. The check should be made payable to the "United States Treasurer."

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-7396 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 22nd day of March 1990, a proposed consent decree in *United States* v. *Nuturn Corporation*, Civil Action No. 8-88-0264, was lodged with the United States District Court for the Middle District of Tennessee. The complaint sought injunctive relief and civil penalties under section 113(b) of the Clean Air Act against Defendant Nuturn Corporation. The complaint alleged that the Defendant had violated the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, promulgated under Section 112 of the Act, 42 U.S.C. 7412, and

codified at 40 CFR part 61, Subpart M, with respect to manufacturing operations conducted at the Defendant's automotive friction products plant in Smithville, Tennessee. Under the proposed Consent Decree, the Defendant must pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justrice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Nuturn Corporation*, D.J. Ref. 90-5-2-1-1176.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Middle District of Tennessee, United States Courthouse, Room 879, 801 Broadway, Nashville, Tennessee (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC, 20044, or in person at the U.S. Department of Justice Building, Room 1517, 10th Street and Pennsylvania Avenue, Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $0.50 ($0.10 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-7397 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Petroleum Environmental Research Forum

Notice is hereby given that, on March 13, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Participants and Contractor of the Petroleum Environmental Research Forum ("PERF") Project No. 88-06, titled "A Study of the Effect of the Disposal of Waste Freshwater Drilling Fluid in Earthen Pits During Operation and After Closure", filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to PERF Project No. 88-06 and (2) the nature and objectives of this Project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified conditions. Pursuant to section 6(b) of the Act, the identities of the parties participating in PERF Project No. 88-06 and its general area of planned activity are given below.

The current parties to PERF Project No. 88-06 identified by this notice are: Kerr-McGee Corporation; Soil Analytical Services, Inc.; Shell Development Company; Amoco Production Company; Texaco Inc.; Murphy Oil USA, Inc.; Chevron Oil Field Research Company; Exxon Company, U.S.A.; Conoco, Inc.; and Marathon Oil Company. The objectives of this Project and the area of planned activity are: to design and implement a field monitoring study for examining the fate and transport of chemical constituents from waste drilling fluids remitted to an earthen pit; to compile existing data on the fate and transport of chemical constituents from drilling fluid disposal pits; to design a statistically and scientifically defensible study; to achieve successful field data collection; to reduce and interpret data in a timely fashion; to deliver the date in a computer readable magnetic media with complete documentation including field notes and logs; and to prepare a technically sound final report. Participation in this Project will remain open until termination of the Agreement for PERF Project No. 88-06, and the parties intend to file additional written notification disclosing all changes in membership of this Project. Information regarding participation in this Project may be obtained from Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Oklahoma 73125.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-7399 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By notice dated February 13, 1990, and published in the **Federal Register** on February 22, 1990 (55 FR 6325), NORAC Company, Inc., 405 S. Motor Avenue, Azusa, CA 91702, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Tetrahydrocannabinols (7370) a basic class of controlled substance listed in Schedule I.

No comments or objection have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administration hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 20, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-7404 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-09-M

Importers of Controlled Substances; Registration

By notice date November 27, 1989, and published in the **Federal Register** on January 26, 1990, (55 FR 2709), Radian Corporation, 8501 Mo-pac Blvd., P.O. Box 20188, Austin, Texas 78720, made application to the Drug Enforcement Administration to be registered as an importer of bulk dextropropoxyphene (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II. The firm plans to import limited quantities of deuterated material, not currently available in the U.S. to be used for manufacturing an exempt product for scientific, analytical and research purposes. See (21 U.S.C. 952(a)(2)(c)).

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act (21 U.S.C. 958(a)) and in accordance with title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: March 22, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-7407 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 12, 1990, Smithkline Chemicals, Division Smithkline Beckman Co., 900 River Road, Conshohocken, PA 19428, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers and salts of its optical isomers (1100).	II
Phenylacetone (8501)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA **Federal Register** Representative (CCR), and must be filed no later than (30 days from publication).

Dated: March 20, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-7405 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 16, 1990, Stepan Chemical Co., Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 2, 1990.

Dated: March 20, 1990.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-7406 Filed 3-30-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before May 17, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requests must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedule Pending

1. Department of the Army (N1-AU-89-14). Routine records relating to promotions of reserve personnel.
2. Department of the Navy (N1-NU-89-1). Routine, facilitative records on telecommunications.
3. Department of the Navy (N1-NU-89-3). Routine and facilitative records relating to design of Naval Ships and Ships Material. (Schedule provides for the permanent retention of records relating to overall policies, procedures, and significant actions.)
4. Defense Investigative Services (N1-446-90-1). Records relating to implementation of the Drug-Free Federal Workplace Program.
5. Department of Commerce, Bureau of Economic Analysis, Unit Costs and Emissions Branch, Measures of Economic Well-Being

Branch (N1-375-88-2). Computer printouts, published materials, and housekeeping materials.

6. Department of Education, Office of Education (N1-12-90-1). Miscellaneous administrative records relating to budget preparation, proposed legislation, grant administration, information services, and other management functions, 1940-80.

7. Department of Health and Human Services, Public Health Service (N1-90-90-5). Records of the Office of the Administrator. Schedule of daily activities.

8. Department of Justice, Civil Rights Division (N1-60-90-5). Docket cards, hard copy and microfilm, for Criminal Section cases.

9. Department of Justice, Asylum Policy and Review Unit (N1-60-90-6). Case files covering INS denials of requests for asylum.

10. Office of Special Counsel (N1-481-90-1). Routine administrative records of the Office of Special Counsel.

11. Tennessee Valley Authority, Resource Development (N1-142-89-9). Administrative files covering housekeeping and facilitative matters for the Office of Natural Resources and Econmic Development and the Division of Land and Economic Resources.

12. Tennessee Valley Authority, Power function (N1-142-90-5). Records of the Division of Power Systems Operations, 1934-78, removed during archival processing because they lack sufficient archival value to be retained permanently by the National Archives.

Dated: March 26, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90-7460 Filed 3-30-90; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; National Council on the Art

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Advancement Review Committee on the National Council on the Arts will be held on April 17-18, 1990, from 9 a.m.—5:30 p.m. in room MO7 of the Nancy Hanks Center, 1100 Pennslvania Avenue, NW., Washington, DC 20506.

This meeting is 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sesssions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 23, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operators, National Endowment for the Arts.

[FR Doc. 90-7400 Filed 3-30-90; 8:45 am]

BILLING CODE 7534-01-M

Meeting; Music Advisory Council

Pursuant to section 10(a)(2) of the Federal Adivsory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships section to the National Council on the Arts will be held on April 17-18, 1990 from 9 a.m.-5:30 p.m. and on April 19, 1990, from 9 a.m.-5 p.m. in room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 19, 1990, from 3:30 p.m.-5 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on Arpil 17-18, 1990, from 9 a.m.-5:30 p.m. and April 19 from 9 a.m.-3:30 p.m. are for the propose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance uder the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: March 23, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-7401 Filed 3-30-90; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Visual Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Fellowships/Photography Section) to the National Council on the Arts will be held on April 16-19, 1990, from 9 a.m.—8 p.m. and on April 20 from 9 a.m.—3:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 20, 1990, from 2 p.m.—3:30 p.m. The topics will be guidelines and policy issues.

The remaining portions of this meeting on April 16-19, 1990, from 9 a.m.—8 p.m. and April 20 from 9 a.m.—2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendations on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: March 20, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-7402 Filed 3-30-90; 8:45 am]

BILLING CODE 7537-01-M

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supercedes all previous notices of the PRB membership of the agency.

DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Pamela J. Harpe, Assistant Director of Personnel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., room 208, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts:

Cynthia Rand, Deputy Chairman for Management,
Ana Steele, Director of Program Coordination,
Alvin Felzenberg, Senior Deputy Chairman.

Steven M. Klink,

Director of Personnel, National Endowment for the Arts.

[FR Doc. 90–7453 Filed 3–30–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Public Meeting to Review Motor Operated Valve Test Results

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: Tests were conducted to determine whether isolation motor operated valves (MOVs) in specific high energy BWR pipe systems that penetrate containment will close against high velocity flows in the event of a full guillotine pipe break accident outside containment. The pipe systems that were simulated in the tests are the Reactor Water Cleanup (RWCU) line and the High Pressure Coolant Injection (HPCI) line. The NRC licensing office has determined this accident scenario (if it occurs) to be a significant safety concern and it has been identified as Generic Safety Issue (GSI) 87, "Failure of HPCI Steam Line Without Isolation."

The results of these tests are particularly important for understanding valve and actuator behavior during the accident condition described above. However, the results are also pertinent to understanding valve and actuator behavior at other than blow-down conditions. It is important that the utilities, and valve, actuator and diagnostic equipment manufacturers are made aware of these results to improve MOV reliability and for use in complying with Generic Letter (GL) 89–10, "Safety-Related Motor Operated Valve Testing and Surveillance." Therefore, a meeting has been scheduled for April 18, 1990, from 9 a.m. to 5:30 p.m. at the Bethesda Hyatt Regency Hotel, 7400 Wisconsin Avenue, Bethesda, Maryland 20814. The Bethesda Hyatt is located at the Bethesday Metro Station on the Red Line. In the meeting, engineers from the Idaho National Engineering Laboratory (INEL) will review the results of the tests and discuss the main findings. In addition, interpretations of the data that are pertinent to GL 89–10 will also be high-lighted. Follow-on short term and long term efforts of the NRC and EPRI will also be identified.

A panel of experts representing related technical areas of the nuclear industry, including codes and standards, has been identified and these experts will be the main participants in the meeting. Although the agenda is very full, time may be available near the end of the meeting for questions from the audience; however, this will be accomplished on a time permitting basis only. Therefore, persons wishing to make statements on any of the topics should notify the contact listed below and submit a written request including the desired statement at least one week in advance of the meeting. The statement should be no longer than 3 minutes.

FOR FURTHER INFORMATION CONTACT: Gerald H. Weidenhamer, U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research, 5650 Nicholson Lane South (217B), Rockville, Maryland 20852, Telephone: (301) 492–3839, Facsimile: 301 443–7804 or (301) 443–7836, Verification: (301) 492–3607.

Meeting Topics

1. Introduction and Objectives.
2. Main Address.
3. Background.
4. Review Results of Valve Tests.
5. Summary and Discussion of Issues.
6. Panel Comments.
7. NRC Research Plans.
8. NRC Valve Regulatory Activity.
9. EPRI Plans.
10. Open Questions and Discussions (time permitting).

Dated in Rockville, Maryland, this 27th day of March, 1990.

For the Nuclear Regulatory Commission.

Milton Vagins,

Chief, Electrical and Mechanical Engineering Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 90–7471 Filed 3–30–90; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Appeal Board

[Docket Nos. 50–443–OL, 50–444–OL (Offsite Emergency Planning Issues)]

Public Service Company of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of March 22, 1990, oral argument on the appeals of the Attorney General of Massachusetts, the Seacoast Anti-Pollution League, the New England Coalition on Nuclear Pollution, the City of Newburyport, and the Towns of Amesbury, Hampton, Newbury, Salisbury, and West Newbury from the Licensing Board's decisions in LBP–89–32, LBP–89–17, LBP–90–1, and related rulings, will be heard at 9:30 a.m. on Wednesday, April 18, 1990, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

Dated: March 27, 1990.

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 90–7472 Filed 3–30–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90-015]

Meeting of the Subcommittee on Inert Gas Systems, Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Inert Gas Systems of the Chemical Transportation Advisory Committee (CTAC) will hold its first meeting on Wednesday, April 18, 1990 in room 4315, Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The Subcommittee was formed to develop guidelines for the safe operation and maintenance of inert gas systems. The meeting is scheduled to begin at 9:30 a.m. and end at 4 p.m. This meeting will be devoted to reviewing problems associated with the maintenance of existing inert gas systems in which the manufacturer of the system is either no longer in business or the specific system design is no longer produced and major components are not readily available.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the persons indicated under **"FOR FURTHER INFORMATION CONTACT"** no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Fitch or Commander Gordon Marsh, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-1217.

Dated: March 26, 1990.

J. D. Sipes,

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

[FR Doc. 90-7422 Filed 3-30-90; 8:45 am]

BILLING CODE 4910-14-M

[Docket 46760]

Office of Hearings; Discovery Airways, Inc. and Mr. Philip Ho

Order Reassigning Proceeding

This proceeding has been reassigned to Administrative Law Judge Ronnie A. Yoder, for administrative reasons. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, room 9228, Department of Transportation, 400 Seventh Street, SW., Washington, DC., 20590. Telephone: (202) 366-2138.

John J. Mathias,

Chief Administrative Law Judge.

Attachment—Service List.

Service List

Mr. Don E. Straight, President, Discovery Airways, Inc., 90 Nakolo Place, Honolulu, Hawaii 96819

Curtis M. Coward, Esquire, McGuire, Woods, Battle, & Boothe, 8280 Greensboro Drive, Suite 900, Tysons Corner, McLean, VA 22101

Mr. A. Maurice Myers, President & Chief Executive Officer Aloha Airlines, Inc., P.O. Box 30028, Honolulu, Hawaii 96820

Marshall S. Sinick, Esquire, Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, NW., Suite 500, Washington, DC 20044

Mr. Albert P. Wells, Executive Vice President & Chief Operating Officer, Hawaiian Airlines, Inc., P.O. Box 30008, Honolulu, Hawaii 96820

Jonathan B. Hill, Esquire, Eileen M. Gleimer, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, NW., Suite 500, Washington, DC 20037

Joseph Guerrieri, Jr., Esquire, Robert S. Clayman, Esquire, Guerrieri, Edmond & James, 1150 17th Street, NW., Suite 300, Washington, DC 20036

Mr. Russell Bailey, Air Line Pilots Association, 1625 Massachusetts Ave., NW., Washington, DC 20036

Benjamin H. Tollison, Assistant Manager, Fields Program Division, AFS-501, Office of Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Assistant Chief Counsel, AWP-7, Federal Aviation Administration, P.O. Box 92007, Los Angeles, California 90009

Mr. John H. Cassady, Acting Deputy Chief Counsel AGC-2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Mr. David R. Harrington, Acting Manager, Air Transportation Division, AFS-200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Mr. Peter N. Beckner, Federal Aviation Administration, Flight Standards District Office, 90 Nakolo Place, Room 215, Honolulu, Hawaii 96819

American Association of Airport Executives, 4224 King Street, Alexandria, Virginia 22302

Mr. Robin A. Caldwell, Director, Office of Aviation Information Management, DAI-1, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590

Mr. Richard A. Nelson, Office Airline Guide, 2000 Clearwater Drive, Oak Brook, Illinois 60521

Mr. William C. Williams, Jr., Flight Standards Division, AWP-200 Federal Aviation Administration, P.O. Box 92007, Los Angeles, California 90009

The Honorable Charles S. Robb, United States Senate, Washington, DC 20510

Mr. Robin A. Caldwell, Director, Office of Aviation Information Management, DAI-1, Department of Transportation, 400 7th Street SW., Washington, DC 20590

Mr. Robert S. Goldner, Special Counsel, Office of the Deputy Assistant Secretary for Policy and International Affairs, P-7, Room 9216, Department of Transportation, Washington, DC 20590

Docket Section, C-55, Room 4107, Office of the Secretary, Department of Transportation, 400 7th Street, SW., Washington, DC 20590
Original + 5 copies

The Honorable Ronnie A. Yoder, Administrative Law Judge, Office of Hearings, M-50, Room 9228, Department of Transportation, 400 7th Street SW., Washington, DC 20590

[FR Doc. 90-7403 Filed 3-30-90; 8:45 am]

BILLING CODE 4910-62-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 63
Monday, April 2, 1990

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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, March 27, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in open session to consider the following matter:

Memorandum and resolution re: FDIC Statement of Policy on Assistance to Operating Insured Banks and Savings Associations, which statement of policy: (1) Replaces FDIC's Operating Bank Assistance Policy Statement; (2) reflects (a) the Corporation's experience since 1986 with assisted transactions pursuant to section 13(c) of the Federal Deposit Insurance Act, and (b) the amendments to section 13 of the Federal Deposit Insurance Act enacted by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and (3) establishes specific criteria for eligibility for assistance.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director Salvatore R. Martoche (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matter on less than seven days' notice to the public and that no earlier notice of the meeting than that previously provided on March 21, 1990, was practicable.

At the same meeting, the Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding lawsuits brought by the Corporation, the Federal Savings and Loan Insurance Corporation, or the Resolution Trust Corporation ("RTC") against firms seeking to provide services to the Corporation or the RTC.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: March 28, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-7615 Filed 3-29-90; 1:22 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:52 p.m. on Tuesday, March 27, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Memorandum regarding the Corporation's corporate activities.

Matters relating to the probable failure of certain insured banks.

Administrative enforcement proceedings.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director Salvatore R. Martoche (Director of the Office of Thrift Supervision) and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 28, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-7616 Filed 3-29-90; 1:22 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, April 3, 1990, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Policy Statement on Encouragement and Preservation of Minority Ownership of Financial Institutions.

Memorandum and resolution re: Final amendment to Part 304 of the Corporation's rules and regulations, entitled "Forms, Instructions, and Reports," which amendment requires 30 days advance notice only when an insured institution plans to grow rapidly (a growth rate of 7.5 percent over any three-month period) through the solicitation, in any combination, of fully insured brokered deposits, fully insured out-of-territory deposits, or secured borrowings, including repurchase agreements.

Memorandum and resolution re: Regulation implementing 12 U.S.C. § 1823(k) relating to the override of state laws.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: March 27, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-7591 Filed 3-29-90; 1:25 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on April 3, 1990, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Office of Inspector General:

Audit Report re:
Financial Statements for First Savings and Loan Association of Burkburnett as of September 30, 1988 (Memo dated March 9, 1990)
Audit Report re:
Financial Statements for Ramona Savings and Loan Association as of September 30, 1988 (Memo dated March 14, 1990)
Audit Report re:
EDP Audit on Addison Consolidated Office (Memo dated March 9, 1990)
Audit Report re:
Audit of the On-Line Call Report Processing System (Memo dated March 9, 1990)
Audit Report re:
Audit of Summary Analysis of Examination Reports (SAER) Subsystem (Memo dated March 9, 1990)
Audit Report re:
Review of Property Manager—Talbert Inns Management Company (Memo dated March 9, 1990)
Audit Report re:
Audit of Corporate Investment Procedures (Memo dated March 14, 1990)
Audit Report re:
Audit on Petty Cash Controls (Memo dated March 15, 1990)
Audit Report re:
Special Review of Travel Claims (Memo dated March 9, 1990)

Discussion Agenda:

Personnel actions regarding appointments, promotions administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: March 27, 1990

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–7592 Filed 3–29–90; 1:25 pm]

BILLING CODE 6714–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Meeting of the Board of Directors

(Continuance of March 13 Special Meeting)

TIME AND DATE: 10 a.m., Monday, April 2, 1990.

PLACE: Federal Reserve System, Marriner S. Eccles Federal Reserve Building, Special Library, C Street Entrance between 20th and 21st Streets NW., Washington, DC.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Assistant Secretary, 376–2400.

AGENDA:

I. Annual Review of Executive Accomplishments, and other internal personnel matters;
II. Officers' Compensation; and
III. Follow-up of Audit Committee Report.

Carol J. McCabe,

General Counsel/Secretary.

[FR Doc. 90–7601 Filed 3–29–90; 1:21 pm]

BILLING CODE 7570–01–M

RESOLUTION TRUST CORPORATION

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Tuesday, March 27, 1990, at 2:56 p.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to the resolution of three thrift institutions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director Salvatore R. Martoche, (Acting Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: March 27, 1990.

Resolution Trust Corporation.

John M. Buckley,

Executive Secretary.

[FR Doc. 90–7617 Filed 3–29–90; 1:18 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation determined, by unanimous vote, that Corporation business required, on less than seven days notice to the public, withdrawal of the Policy on Post-Insolvency Interest for Direct Collateralized Borrowings from the March 27, 1990 open meeting "*Discussion Agenda.*" The staff instead briefed the Board on the status of the policy. No earlier notice of this change in the subject matter of the meeting was practicable.

The Board further determined, by unanimous vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days notice to the public, of the memorandum regarding

Lawsuits Brought by the FDIC, FSLIC, or RTC Against Firms Seeking to Provide Services to the FDIC or the RTC; and that no earlier notice of this change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: March 28, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–7589 Filed 3–29–90; 1:18 pm]

BILLING CODE 6714–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 2:00 p.m. on Tuesday, April 3, 1990 to consider the following matter:

Summary Agenda

No Cases

Discussion Agenda

A. *Memorandum re*: Proposed RTC Policy Statement and Procedures for RTC Employees Interaction with Public Officials

The meeting will be held in the Board Room of the FDIC Building located at 550, 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898–3604.

Dated: March 27, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–7590 Filed 3–29–90; 2:06 pm]

BILLING CODE 6714–01–M

federal register

Monday
April 2, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Community Development Work Study Program; Announcement of List of Competition Winners

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-3045; FR-2786-N-01]

Community Development Work Study Program (CDWSP); Announcement of List of Competition Winners

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

ACTION: Announcement of CDWSP Competition Winners.

SUMMARY: On June 27, 1989, as revised on July 11, 1989, the Department published in the **Federal Register** a Notice of Fund Availability that solicited applications for the Community Development Work Study Program (CDWSP) under the Secretary's Discretionary Fund for FY 1989 and FY 1990. The work study program is hands-on experience for future leaders and problem solvers and can make a significant difference both for the student and the local community. This Program authorized HUD to provide grants to institutions of higher education, either directly or through areawide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participated in community development work study programs and were enrolled in full-time graduate or undergraduate programs in community and economic development, community planning, and community management. The purpose of this Notice is to publish in the **Federal Register** the names and addresses of institutions selected as winners of the Community Development Work Study competition.

EFFECTIVE DATE: April 2, 1990.

FOR FURTHER INFORMATION CONTACT: Information requests concerning student participation should be addressed to the organization selected to receive funds. For further information concerning the selection process, contact James H. Turk, Technical Assistance Division, Office of Program Policy Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone, (202) 755-6876. The Telecommunications Device for the Deaf (TDD) number is (202) 755-5965. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 107(c) of the Housing and Community Development Act of 1974 authorizes the Community Development Work Study Program (CDWSP) under the Secretary's Discretionary Fund. In a Notice of Fund Availability published on June 27, 1989 (54 FR 27135), HUD announced the availability of $3 million for the CDWSP from amounts that were appropriated in the Department of Housing and Urban Development—Independent Agencies Appropriations Act of 1989 (Pub. L. 100-404, approved August 19, 1988), and solicited applications for programs beginning in the Fall of 1989 or the Fall of 1990.

HUD combined the FY 1989 and FY 1990 appropriations to hold one competition for these grants. The Department, however, recognized that applicants for funding in the Fall of 1989 were significantly disadvantaged. For this reason, HUD published the July 11, 1989 (54 FR 29107) notice to expand the work study program to provide a third alternative—funding for a two-year support cycle beginning in Spring, 1990 (That funding would support programs from January 1990 to January 1992.)

In response to the published notices of fund availability, fifty-one colleges, universities and regional planning organizations will receive $5.9 million from the Department in order to help a new generation of leaders obtain advanced degrees in community and economic development. The HUD Community Development Work Study program will enable 230 economically disadvantaged men and women to spend two full academic years at one of 29 selected colleges or universities throughout the nation. At the same time, the students will gain professional experience by working to plan, develop, or administer local activities undertaken through HUD programs such as Enterprise Zones, McKinney Act Homeless Assistance Programs, and Community Development Block Grants (CDBG).

Accordingly, in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, Public Law 101-235 (approved December 15, 1989), the Department is publishing the names and addresses of institutions selected of the first list of winners of the Community Development Work Study competition in the **Federal Register** to read as follows:

FY 89 COMMUNITY DEVELOPMENT WORK STUDY PROGRAM

Applicant	No. of students	Amount awarded
HUD Region: I		
New Hampshire College	10	$215,000
Mr. Michael Swack, Community Economic Development Program, 2500 N. River Road, Manchester, NH 03104-1394, Telephone: (603)668-2211		
University of Rhode Island	3	79,086
Dr. Farhad Atash, 70 Lower College Road, Kingston, RI 02881, Telephone: (401)792-2248		
HUD Region: III		
Carnegie Mellon University	10	300,000
Mr. Harold D. Miller, School of Urban and Public Affairs, 5000 Forbes Ave., Pittsburgh, PA 15213, Telephone: (412)268-3841		
Metropolitan Washington COG	12	345,000
Mr. David Robertson, 1875 Eye Street NW., Suite 200, Washington, DC 20006, Telephone: (202)962-3262		
University/District of Columbia (3)		
Howard University (3)		
University of Maryland (3)		
Northern Virginia Campus (3)		
Baltimore Regional Council of Governments	9	270,917
Dr. Philip S. Clayton, 2225 North Charles St., Baltimore, MD 21218, Telephone: (301)554-5617		
Morgan State University (3)		
Towson State University (3)		
University of Baltimore (3)		
HUD Region: IV		
Clemson University	10	242,000

FY 89 Community Development Work Study Program—Continued

Applicant	No. of students	Amount awarded
Mr. Herb Norman, College of Architecture, Dept. of Planning Studies, Clemson, SC 29634-0511, Telephone: (803)656-3926		
University of Florida	6	$162,630
Dr. Richard H. Schneider, Division of Sponsored Research, 219 Grinter Hall, Gainesville, FL 32611, Telephone: (904)392-4836		
University of Kentucky	4	113,290
Dr. Phillip W. Roeder, Research Foundation, 201 Kinkead Hall, Lexington, KY 40506-0057, (606)257-5741		
East Carolina University	5	124,780
Ms. Janice Faulkner, Willis Building, First & Reade Streets, Greenville, NC 27858-4353, Telephone: (919)757-6650		
Eastern Kentucky University	3	81,600
Dr. Terry Busson, Lancaster Ave., Richmond, KY 40475-3101, Telephone: (606)622-1019		
Jackson State University	3	88,200
Dr. Curtina Moreland-Young, Department of Political Science, 1400 Lynch St., Jackson, MS 39217, Telephone: (601)968-7072		
Western Kentucky University	3	82,110
Dr. Carl P. Chelf, Bowling Green, KY 42101, Telephone: (502)745-6357		
HUD Region: V		
University of Wisconsin-Green Bay	5	101,910
Mr. Ray Hutchison, Center for Public Affairs, 2323 Nicolet Dr., Green Bay, WI 54301-7001, Telephone: (414)465-2355		
University of Illinois at Chicago	8	175,872
Mr. Charles J. Orlebeke, School of Urban Planning and Policy (M/C 348), P.O. Box 4248, Chicago, IL 60680, Telephone: (312)996-2166		
Ohio State University	3	87,450
Mr. Dale Bertsch, Dept. of City and Regional Planning, 289 Brown Hall, 190 West 17th Ave., Columbus, OH 43210-1320, Telephone: (614)292-2370		
HUD Region: VI		
Alamo Area Council of Governments	6	148,800
Mr. Claude Cuerra, Atlee B. Ayres Building, 118 Broadway, Suite 400, San Antonio, TX 78205, Telephone: (512)225-5201		
St. Mary's University (3)		
University of Texas at San Antonio (3)		
HUD Region: VII		
Iowa State University	4	104,340
Dr. Duane Shinn, 126 College of Design, Ames, IA 50011, Telephone: (515)294-8979		
Kansas State University	3	83,199
Mr. Vernon P. Deines, Dept. of Regional and Community Planning, Seaton Hall 302, Manhattan, KS 66506, Telephone: (913)532-5958		
HUD Region: XI		
Northern Arizona University	7	193,816
Dr. Zachary A. Smith, P.O. Box 15036, Flagstaff, AZ 86011, Telephone: (602)523-7020		
National totals	114	3,000,000

FY 90 Community Development Work Study Program

Applicant	No. of students	Amount awarded
Region: I		
New Hampshire College	3	$64,500
Mr. Michael Swack, Coordinator, Community Economic Development Program, 2500 N. River Road, Manchester, NH 03104-1394, Telephone: (603) 668-2211		
University of Rhode Island	3	79,896
Dr. Farhad Atash, Director of Research, 70 Lower College Road, Kingston, RI 02881, Telephone: (401) 792-2248		
Region: II		
University of Puerto Rico	4	78,849
Dr. Rafael L. Irizarry, UPR Station, P.O. Box 23354, Rio Piedras, PR 00931-3354, Telephone: (809) 765-5244		
State University of New York at Buffalo	3	74,465
Ms. Mary Atkinson, Research Foundation, 516 Capen Hall, Buffalo, NY 14260, Telephone: (716) 636-2980		
Region: III		
Virginia Polytechnic Institute	3	86,403
Mr. William G. Harris, Office of Sponsored Programs, 301 Burruss Hall, Blacksburg, VA 24061, Telephone: (703) 961-5283		
Carnegie Mellon University	3	90,000
Mr. Harold D. Miller, School of Urban and Public Affairs, 5000 Forbes Ave., Pittsburgh, PA 15213, Telephone: (412) 268-3841		
Metropolitan Washington COG	12	345,000
Mr. David Robertson, 1875 Eye Street, NW., Suite 200, Washington, DC 20006, Telephone: (202) 962-3262		
University/District of Columbia (3)		
Howard University (3)		
University of Maryland (3)		
Northern Virginia/Falls Church Satellite Campus (3)		
University of Pittsburgh	3	90,000
Dr. John E. McAllister, Office of Research, 350 Thackeray Hall, Pittsburgh, PA 15260, Telephone (412) 648-7616		

FY 90 COMMUNITY DEVELOPMENT WORK STUDY PROGRAM—Continued

Applicant	No. of students	Amount awarded
Region: IV		
Clemson University	7	$167,595
Mr. Herb Norman, College of Architecture, Dept. of Planning Studies, Clemson, SC 29634-0511, Telephone: (803) 656-3926		
University of Florida	3	74,100
Dr. Richard H. Schneider, Assoc. Dean College of Architecture, Division of Sponsored Research, 219 Grinter Hall, Gainesville, FL 32611, Telephone: (904) 392-4836		
University of Kentucky	3	85,032
Dr. Phillip W. Roeder, Director, Research Foundation, 201 Kinkead Hall, Lexington, KY 40506-0057, Telephone: (606) 257-5741		
Eastern Kentucky University	3	81,798
Dr. Terry Busson, Lancaster Ave., Richmond, KY 40475-3101, Telephone: (606) 622-1019		
Triangle J Council of Governments	10	261,324
Mr. Raymond J. Green, Executive Director, 100 Park Dr., P.O. Box 12276, Research Triangle Park, NC 27709, Telephone: (919) 549-0551		
University of North Carolina (3)		
North Carolina Central University (4)		
North Carolina State University (3)		
Alabama A&M University	3	68,376
Ms. Constance W. Jordan, Interim Chairperson, Community Planning and Urban Studies, Huntsville, AL 35762, Telephone: (205) 851-5425		
Region: V		
University of Wisconsin-Green Bay	5	97,236
Mr. Ray Hutchinson, Center for Public Affairs, 2323 Nicolet Dr., Green Bay, WI 54301-7001, Telephone: (414) 465-2355		
University of Cincinnati	3	90,000
Dr. John E. Kleymeyer, Assoc. Prof. of Planning, School of Planning, University of Cincinnati, Cincinnati, OH 45221-0016, Telephone: (513) 556-0214		
Ball State University	3	77,962
Mr. Francis Parker, Urban Planning, 2000 University Ave., Muncie, IN 47306, Telephone: (317) 285-1963		
Cleveland State University	3	87,858
Mr. Dennis Keating, Maxine Goodman Levin College of Urban Affairs, Cleveland, OH 44115, Telephone: (216) 687-2136		
University of Illinois at Chicago	3	65,952
Mr. Charles J. Orlebeke, Director, School of Urban Planning and Policy (M/C 348), P.O. Box 4248, Chicago, IL 60680, Telephone: (312) 996-2166		
Region: VI		
North Central Texas Council of Governments	9	201,600
Ms. Karen Grady, P.O. Drawer COG, Arlington, TX 76005-5888, Telephone: (817) 640-3300		
University of Texas at Arlington (3)		
University of Texas at Dallas (3)		
University of North Texas (3)		
Texas Tech University	3	72,564
Mr. Jerry Perkins, Center for Public Service, P.O. Box 4290, Lubbock, TX 70409, Telephone: (806) 742-3125		
University of New Orleans	3	54,120
Dr. Christine C. Cook, College of Urban and Public Affairs, Lakefront Drive, New Orleans, LA 70148, Telephone: (504) 286-6277		
Region: VII		
Drake University	3	90,000
Dr. Garry Frank, College of Business & Public Administration, 2507 University Ave., Des Moines, IA 50311, Telephone: (515) 271-2426		
Iowa State University	3	78,804
Dr. Duane Shinn, Professor, 126 College of Design, Ames, IA 50011, Telephone: (515) 294-8979		
Kansas State University	3	83,202
Mr. Vernon P. Deines, Professor, Dept. of Regional and Community Planning, Seaton Hall 302, Manhattan, KS 66506, Telephone: (913) 532-5958		
University of Kansas	3	64,032
Ms. Barbara S. Romzek, Dept. of Public Administration, 318 Blake Hall, Lawrence, KS 66045, Telephone: (913) 864-3527		
Southwest Missouri State University	3	54,744
Dr. Paul M. Toom, Office of Graduate Studies & Research, 901 S. National, Springfield, MO 65804, Telephone: (417) 836-5335		
Region: IX		
University of New Mexico	3	66,240
Mr. James Richardson, Professor, School of Architecture and Planning, 2414 Central Ave., SE., Albuquerque, NM 87106, Telephone: (505) 277-2903		
University of California	3	84,348
Ms. Maureen Barnato, Sponsored Projects Office, Banway Building, 5th Fl., Berkeley, CA 94720, Telephone: (415) 642-8109		
FY 1990 Totals	116	2,916,000

Dated: March 9, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90-7429 Filed 3-30-90; 8:45 am]

BILLING CODE 4210-29-M

federal register

Monday
April 2, 1990

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Supportive Housing Demonstration Program; Notice of Fund Availability for Permanent Housing for Handicapped Homeless Persons; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-3035; FR-2729-N-01]

Supportive Housing Demonstration Program; Notice of Fund Availability for Permanent Housing for Handicapped Homeless Persons

AGENCY: Office of the Assistant Secretary for Community Housing and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice announces the availability of $15,000,000 in funds for applications for assistance under the permanent housing for the handicapped homeless program of the Supportive Housing Demonstration.

DATES: Applications for permanent housing assistance must be received by 3:00 p.m. Eastern Time on July 2, 1990.

ADDRESSES: Send applications for permanent housing assistance to: Department of Housing and Urban Development, Office of Community Planning and Development, Special Needs Assistance Programs, Room 7262, 451 Seventh Street SW., Washington, DC 20410. Application packages are available from the HUD Field Office for the area in which the applicant's project is located. A list of Field Offices and contact persons appears at the end of this Notice. Additional information regarding submission of applications is provided in the application packages.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300 or, for hearing and speech-impaired persons, (202) 755-5965. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and were assigned OMB control number 2506-0112, expiration date December 31, 1992.

The Supportive Housing Demonstration was authorized by the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987), as amended by the Stewart B. McKinney Homeless Assistance Amendments Act (Pub. L. 100-628, enacted Nov. 7, 1988). The purpose of the demonstration is to develop innovative approaches to providing housing and supportive services to the homeless, especially to deinstitutionalized homeless individuals, homeless families with children, and homeless individuals with mental disabilities and other handicapped homeless persons. The demonstration consists of two programs: transitional housing and permanent housing for the handicapped homeless. HUD published a final rule (24 CFR part 577 (transitional housing) and part 578 (permanent housing for the handicapped homeless)) governing all aspects of the programs on November 8, 1989 (54 FR 47024). (An amendment to parts 577 and 578 was published on January 11, 1990 (55 FR 1156) with the interim rule on the lease or sale of HUD-acquired single family homes for the homeless.)

This Notice announces the availability of $15,000,000 in funds for assistance under the permanent housing for handicapped homeless persons program. The funds, appropriated by the HUD appropriations act for fiscal year 1990 (Pub. L. 101-144, approved November 9, 1989), are available for assistance in the form of: (1) Advances for acquisition, substantial rehabilitation, or acquisition and substantial rehabilitation of existing structures; (2) advances for new construction (under limited circumstances); (3) grants for moderate rehabilitation of existing structures; and (4) grants for annual operating costs and supportive services costs (up to two years). Eligible applicants are States in which the permanent housing project is to be located. An applicant may be the State housing finance agency (or other State agency) that customarily implements housing programs for the State and that is identified by statute to participate in housing programs in the State. (A project sponsor may be a private nonprofit organization that an authorized official of the applicant approves as financially responsible, or a public housing agency (PHA). The project sponsor must operate the permanent housing and must provide (or coordinate the provision of supportive services to the permanent housing residents.) Applicants may be eligible for one or any combination of the types of assistance.

To be considered for permanent housing assistance, an applicant must meet the application requirements at § 578.210 of the November 8, 1989, final rule and those contained in the application. (A copy of the final rule is included in the application package.) The applicant is required to submit information on the proposed project and project sponsor, characteristics of the handicapped homeless population that the project will serve, and a description of the supportive services to be offered to the residents, as well as other information and assurances described in the application package.

Applications will be scored and ranked, with a maximum of 1,000 points based upon nine criteria. To be eligible for an award, applicants must achieve points under each criterion, with the exception of criterion 5 (matching). The criteria, which are described in detail in § 578.215 of the permanent housing final rule, are:

1. *Project sponsor capacity* (100 points)—HUD will award up to 100 points based on the project sponsor's relative ability to carry out activities under the program within a reasonable time, and in a successful manner.

2. *Innovative quality of proposal* (100 points)—HUD will award up to 100 points based on the innovative quality of the proposal in providing permanent housing and supportive services for handicapped homeless persons.

3. *Need for permanent housing in the area to be served* (150 points)—HUD will award up to 150 points based on the extent to which the applicant demonstrates an unmet need in the area for the proposed permanent housing.

4. *Delivery of supportive services* (200 points)—HUD will award up to 200 points based on the extent to which the quality and comprehensiveness of the proposed supportive services are related to the goal of maximizing the ability of residents to live more independently within a permanent housing environment, regardless of whether permanent housing assistance for supportive services is requested.

5. *Matching* (50 points)—HUD will award up to 50 points based on the extent to which an applicant will match the HUD assistance with more than the required amount of non-Federal funds from other sources.

6. *Cost effectiveness* (100 points)—HUD will award up to 100 points based on the extent to which the applicant's proposed costs are reasonable in relation to the work to be done and the goods and services to be purchased, and are effective in accomplishing the purposes of the proposal. HUD believes that cost-effective approaches are important, but recognizes that this quality can be difficult to measure. The allocation of only 100 points out of 1,000 for cost effectiveness reflects this difficulty, not a lack of emphasis on the importance of this criterion.

7. *Project quality* (150 points)—HUD will award up to 150 points based on the extent to which the proposed project will meet the needs of handicapped homeless persons in the State.

8. *Site control* (50 points)—HUD will award up to 50 points based on the extent to which an applicant has control of the site for the proposed project.

9. *Integration into the neighorhood* (100 points)—HUD will award up to 100 points based on the extent to which the proposed project is integrated into the neighborhood in which it is, or is proposed to be, located.

HUD expects to announce awards of funds for permanent housing for the handicapped homeless by August 30, 1990. Applicants will be notified whether the application will be funded or rejected. In the event of a tie between applicants, the applicant with the highest total points for ranking criteria 3 (need for permanent housing in the area to be served) and 4 (delivery of supportive services) will be chosen. In the event of a procedural error that, when corrected, would result in awarding sufficient points to warrant funding of an otherwise eligible applicant during the funding round under this Notice, HUD may fund that applicant in the next funding round.

Certification Regarding Lobbying

On December 20, 1989, the Department published a notice at 54 FR 52070 advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans of a new prohibition recently mandated by Congress. Section 319 of the Department of the Interior Appropriations Act, Public Law 101–121, approved October 23, 1989, generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

Also on December 20, 1989, at 54 FR 52306, the Office of Management and Budget (OMB) issued interim final guidance to implement this prohibition. Effective December 23, 1989, this guidance generally prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. In addition the recipient must also file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Application Packages

Application packages may be obtained by writing or calling the Department of Housing and Urban Development field office serving the state in which the applicant is located, at the following addresses:

Alabama: Jasper Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Birmingham, AL 35209–3114; (205) 731–1672.

Alaska: William D. Melton, Federal Bldg., 222 W. 8th Ave., #64 Anchorage, AK 99513–7537; (907) 271–3669.

Arizona: Diane Domzalski, One North First St., 3rd Floor, P.O. Box 13468, Phoenix AZ 85004–2361; (602) 379–4654.

Arkansas: Billy M. Parsley, Lafayette Bldg., 523 Louisiana, Ste. 200, Little Rock, AR 72201–3707; (501) 378–6375.

California:
(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235.
(Northern) Gordon H. McKay, 450 Goldengate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–4457.

Colorado: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Connecticut: Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508.

Delaware: John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665.

District of Columbia: James H. McDaniel, 451 7th St. SW., Rm. 3158, Washington, DC 20410–5500; (202) 453–4520.

Florida: Cleveland Talmadge, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 791–3587.

Georgia: Charles N. Straub, Russell Fed. Bldg., 75 Spring St. SW., Atlanta, GA 30303–3388; (404) 331–5139.

Hawaii: Calvin Lew, 300 Ala Moana Blvd., Rm. 3318, Honolulu, HI 96850–4991; (808) 541–1327.

Idaho: John G. Bonham, 520 SW. 6th Ave., Portland, OR 97204–1596; (503) 326–7018.

Illinois: Richard Wilson, 547 W. Jackson Blvd., Chicago, IL 60606–5601; (312) 353–1696.

Indiana: Robert F. Poffenberger, 151 N. Deleware St., Indianapolis, IN 46204–2526; (317) 226–5169.

Iowa: Joe E. Jones, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102–1622; (402) 221–3839.

Kansas: Miguel Madrigal, Professional Bldg., 1103 Grand Ave., Kansas City, MO 64106–2496; (816) 374–6496.

Kentucky: Steve Childress, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394.

Louisiana: Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70172–0288; (504) 589–7212.

Maine: David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

Maryland: Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202–1865; (301) 962–2417.

Massachusetts: Frank Del Vecchio, Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343.

Michigan: Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343.

Minnesota: Shawn Huckleby, 221 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019.

Mississippi: Jeanie E. Smith, Fed., Bldg., 100 Capitol St., Room 910 Jackson, MS 39269–1096; (601) 965–4765.

Missouri:
(Eastern) David H. Long, 210 N. Tucker Blvd., St. Louis, MO 63101–1997; (314) 425–4322.
(Western) Miguel Madrigal, Professional Bldg., 1103 Grand Ave., Kansas City, MO 64106–2496; (816) 374–6496.

Montana: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Nebraska: Joe E. Jones, Braiker/ Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102–1622; (402) 221–3839.

Nevada:
(Las Vegas, Clark Cnty) Diane Domzalski, One North First St., 3rd Floor, P.O. Box 13468, Phoenix AZ 85004–2361; (602) 379–4654.
(Remainder of state) Gordon H. McKay, 450 Goldengate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–4457.

New Hampshire: David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

New Jersey: Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5502; (201) 877–1776.

New Mexico: R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX; 76113–2905; (817) 885–5483.

New York:
(Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768.
(Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885.

North Carolina: Charles T. Ferebee, 415 N. Edgeworth St., Greensboro, NC 27401–2107; (919) 333–5711.
North Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.
Ohio: John E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743.
Oklahoma: Katie Worsham, Fed., Bldg., 200 NW. 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973.
Oregon: John G. Bonham, 520 SW. 6th Ave., Portland, OR 97204–1596; (503) 326–7018.
Pennsylvania:
(Western) James A. Getsy, 412 Old Post Office Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493.
(Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665.
Puerto Rico: Rafael Isern, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5935.
Rhode Island: Frank Del Vecchio, Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343.
South Carolina: Thomas F. O'Brien, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564.
South Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.
Tennessee: Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9422.
Texas:
(Northern) R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX; 76113–2905; (817) 885–5483.
(Southern) Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX; (512) 229–6819.
Utah: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.
Vermont: David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.
Virginia: John Levay, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240–9998; (804) 771–2624.
Washington: John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 442–0374.
West Virginia: James A. Getsy, 412 Old Post Office Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493.
Wisconsin: Lana J. Vacha, Reuss Fed. Plaza, 310 W. Wisconsin Ave., Ste. 1380, Milwaukee, WI 53203–2289; (414) 297–3113.
Wyoming: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Other Matters

During the development of the final rule for the Supportive Housing Demonstration program, the General Counsel, as the designated official under Executive Order 12606, *The Family*, and Executive Order 12612, *Federalism*, made determinations on the impact of the rule on the family and on implications of federalism contained in the rule. Those determinations, published November 8, 1989 (54 FR 47024), have not been altered by any announcements contained in this Notice.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Dated: March 26, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 90–7454 Filed 3–30–90; 8:45 am]
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federal register

Monday
April 2, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 29, 91, 121, 125, and 135

Emergency Locator Transmitters; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 29, 91, 121, 125, and 135

[Docket No. 26180; Notice No. 90-11]

RIN 2120-AD19

Emergency Locator Transmitters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; notice of technical standard order withdrawal.

SUMMARY: The FAA proposes to require installation of an improved emergency locator transmitter (ELT) that meets the requirements of a revised Technical Standard Order (TSO) on U.S.-registered airplanes and to terminate approval to use ELTs authorized under the original TSO issued for this equipment. The new equipment would be required for future installations. The proposal is prompted by unsatisfactory performance experienced with ELTs that are manufactured under the original TSO and relates to safety recommendations by the National Transportation Safety Board (NTSB) and the search and rescue (SAR) community. Although most of the unsatisfactory field experience has been with automatic ELTs, the FAA also proposes improved standards for survival ELTs. The proposals would save lives by increasing the number of survivors rescued after aircraft accidents.

DATES: Comments must be received on or before July 31, 1990.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26180, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26180. Comments may be examined in Room 915G between 8:30 a.m. and 5 p.m. on weekdays, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Phil Akers, Aircraft Engineering Division (AIR-120), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Comments addressing economic issues should be accompanied by detailed supporting information that explains the derivation of any estimates provided by the commenter. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26180." The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

History

In 1971, responding to a congressional mandate for rulemaking (Public Law 91-596), the FAA adopted amendments to parts 25, 29, 91, 121 and 135 of the Federal Aviation Regulations to require the installation and use of ELTs that meet the requirements of TSO-C91. The amendment requires that certain U.S.-registered civil airplanes be equipped with automatic ELT's.

An automatic ELT is a crash-activated electronic signaling device used to facilitate search and rescue efforts in locating downed aircraft. In most installations the device is attached to the aircraft structure as far aft as practicable in the fuselage, or in the tail surface, in such a manner that damage to the beacon will be minimized in the event of a crash impact.

Certain aircraft such as turbojet-powered aircraft and aircraft engaged in scheduled air carrier operations are excepted from this requirement because the rule is applicable to those airplanes that are most difficult to locate after an accident. The ELT is particularly helpful in locating airplanes that are operated by pilots who do not file a flight plan or work with the air traffic control system.

Survival ELTs are manually-operated or actuated upon contact with water. These ELTs are required items of ditching equipment for transport category airplanes and rotorcraft. They are also required items of emergency equipment for extended overwater operations on aircraft used in air carrier, air taxi, and commercial operations.

Since the adoption of these regulations there has been unsatisfactory field experience with the automatic ELTs. Most aviation groups, when addressing the severity of this problem, refer to a failure-to-function rate of two-thirds and a 97 percent false-alarm rate. Validating and quantifying the composition of these statistics are important elements of the FAA's ELT program; these issues are further addressed in the discussion under "ELT statistics."

Because of the unsatisfactory performance experienced with use of ELTs, the FAA requested the Radio Technical Commission for Aeronautics (RTCA) to develop a revised technical standard which would address false alarms and failure-to-activate rates. The RTCA effort produced a minimum operational performance standard that is referenced in TSO-C91a which was issued in April 1985. Installation of ELTs that meet this improved standard, however, is currently voluntary.

National Transportation Safety Board (NTSB) Recommendations

NTSB safety recommendations A-78-5 through A-78-12 issued in 1978 also addressed the ELT problems; they are now classified by the NTSB as "Closed-Acceptable Action", primarily because TSO-91a was issued. Following the issuance of the new TSO, the NTSB, in 1987, issued safety recommendation A-

87–104, which recommends that existing ELTs be replaced by 1989 with ELTs that comply with TSO–C91a, and that ELTs be subject to specific maintenance requirements.

ELT Maintenance

Part 91, subpart C, contains inspection and maintenance requirements for the continued airworthiness of aircraft and their components. Section 91.52 requires the ELT to be in operable condition and provides specific requirements for battery replacement. TSO–C91a contains instructions for periodic maintenance and calibration. These instructions are necessary for an ELT's continued airworthiness and must be provided with each ELT unit manufactured under this TSO. These required instructions provide specific information to enable appropriately rated persons to inspect ELTs and maintain them in an airworthy condition necessary to meet the needs of the flying public and the Search and Rescue community. Further, TSO–C91 and TSO–C91a manufacturers' instructions are being reviewed by the FAA to ensure that these requirements are met. Section 43.13(a) of the Federal Aviation Regulations requires persons performing inspections and maintenance to use manufacturers' instructions or those acceptable to the FAA Administrator. The aircraft owner or operator is responsible for ensuring that the ELT is included in these inspections and is maintained accordingly.

The FAA agrees with the intent of NTSB recommendation A–87–104 and recognizes the need for more specific ELT maintenance requirements. The two components that commonly cause ELT unserviceability are the battery and the G-switch (an actuation device that operates on acceleration forces measured in G's; one G denotes the acceleration of the earth's gravity). Other malfunctions are caused by poor installation or problems associated with the antenna system. As a first step to improve ELT maintenance, Action Notice A 8310.1, which recommends a specific supplemental inspection procedure for ELTs, was issued to all FAA field personnel in September 1988. This information was also included in the February issue of Advisory Circular 43–16, General Aviation Airworthiness Alerts. These documents have been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."** The supplemental inspection applies to ELTs authorized under both TSO–C91 and TSO–C91a. The inspection can be accomplished by closely examining the ELT, its battery pack and antenna, and checking the signal emissions and G switch. If the ELT's antenna is radiating a signal, it can be heard on any frequency through a low-cost AM radio held about 6 inches from the ELT's antenna. Because the ELT transmits on the emergency frequency, such tests must be conducted within the first 5 minutes after any hour and limited to three sweeps of the transmitter's audio signal. The aircraft's VHF receiver, tuned to 121.5 MHz, may also be used. This receiver, however, is more sensitive and does not check the integrity of the ELT system or provide the same level of confidence as does the AM radio. To check the G-switch of a TSO–C91 ELT, remove it from its mounting and give it a quick rap with the hand. For TSO–C91a ELTs, use a throwing motion coupled with a rapid reversal. Since these are not measured checks, they do not quantify the adequacy of G-switch or power output of the antenna, but do provide an acceptable level of confidence that the ELT is functioning properly.

Early this year, the FAA developed criteria for measured testing of the ELT signal and the G-switch. Technical assistance from the National Aeronautics and Space Administration (NASA) was used to validate the tests on several DOT airplanes and to determine its practicality. Currently, these tests are being carried out at six different repair stations to gather more information on ELT maintenance. Measurements of the G-switch actuation limits, however, are being taken by only one of the six repair stations due to the need for specialized equipment to conduct that test.

Data obtained from the tests performed at the repair stations will be included in a study to quantify the level of safety and dependability expected with the use of TSO–C91a ELTs. The data will also be used to quantify the need for improved maintenance of all ELTs.

Interagency Committee on Search and Rescue

In 1973, the Interagency Committee on Search and Rescue (ICSAR) was established to oversee and act as a coordinating forum for national SAR matters. This committee also coordinates the development of policy, procedures and equipment with other national agencies involved with emergency services. The objectives of the committee are to provide increased effectiveness and standardization for the national SAR system.

ELT Monitors

In 1987, the Interagency Committee on Search and Rescue sponsored a program to field test the effectiveness of an aircraft cockpit monitor which is a design improvement specified by TSO–C91a. The monitor would alert the pilot when the aircraft's ELT has been activated. If the activation is a non-distress signal (false alarm), the ELT can be silenced before search and rescue forces are alerted and deployed. This experiment, though only moderately successful, provided some useful data on monitoring ELT performance.

A large percentage of false alarms originate from ELTs installed on aircraft located at airports. The Interagency Committee on Search and Rescue is currently sponsoring another program to record ELT activations at selected airports through the use of stationary monitors. Most of these monitors are linked to equipment that automatically logs the ELT activations. Stationary monitors, when properly used, would significantly reduce the number of non-distress missions because immediate action could be taken to silence these false alarms before SAR forces are deployed.

ELT Awareness

To provide some improvement in ELT performance, the FAA has increased its efforts to reduce the number of false alarms experienced with the use of existing ELTs approved under TSO–C91. The Administrator, at the April 1987 National Air Transportation Association convention, addressed how fixed-base operators can help to locate and silence false alarms at airports. A pamphlet titled "Attention to ELT's; Insurance To Life" was developed and distributed at the convention and has been distributed to all active U.S. pilots. The information contained in the pamphlet is discussed at pilot safety seminars and has been incorporated in the FAA Back-To-Basics program.

Availability of TSO–C91a ELTs

ARNAV Systems, Inc., has obtained FAA approval of an ELT that meets the specifications of TSO–C91a. TSO–C91a authorization was issued for the model ELS–10 in October 1986 and for a lower cost model, the ELT–100, in March 1988. These ELTs market for approximately $900 and $350, respectively, and have beneficial design enhancements, such as built-in test equipment. No adverse field experience has been reported on approximately 200 installations of these units. There has been one documented accident involving an aircraft equipped with an ARNAV ELT; the ELT activated

properly in that case. Furthermore, there have been no reports of false alarms involving ARNAV ELTs. The most recent TSO–C91a authorization was issued to Narco Avionics Inc., for its model ELT–910 in June 1989. It is expected to market for approximately $400. Several other ELT manufacturers have expressed an interest in producing TSO–C91a ELTs.

406 MHz ELTs

A new 406 MHz ELT, specifically designed to work with the Search and Rescue Satellite-Aided Tracking System, is coming into international use, and a national standard for this beacon has been developed by RTCA. The SAR community in general strongly advocates the adoption of 406 MHz ELTs, and the Coast Guard has issued carriage requirements for similar beacons in certain maritime applications. This ELT is estimated to market for at least twice the cost of the TSO–C91a ELTs. Although acceptable performance with the satellite system can be obtained using 121.5/243 MHz ELTs built to the standards of TSO–C91a, the 406 MHz system is expected to provide significant performance and information improvements such as greater signal margin, better position accuracy, specific airplane identification information, global coverage, and less susceptibility to interference. These features are expected to permit more effective and timely SAR response.

In accomplishing these improvements, the 406 MHz system transmits short coded signals every 50 seconds on a frequency that is not used for communications. It is, however, impossible to have homing or frequency monitoring capabilities on this frequency without specialized equipment. The 121.5 MHz signal must be added to the 406 MHz system to provide for continued universal monitoring by the aviation community and to provide homing capability using existing equipment. Homing capability is especially needed in mountainous areas and during times of poor visibility.

RTCA Special Committee 160 has developed a minimum operational performance standard for a 406 MHz ELT to be used as an optional adjunct to a 121.5/243 MHz ELT. The intended configuration of this triple frequency ELT can be accomplished by either of two approaches: (1) Installation of a stand-alone 406 MHz ELT to augment an existing 121.5/243.0 MHz ELT installation; or (2) Installation of an integrated 121.5/243.0/406 MHz ELT, of which the 121.5/243.0 MHz portion would meet the requirements of TSO–C91a. This RTCA standard, Document No. RTCA/DO–204, has been coordinated with the European Organization for Civil Aviation Electronics and was approved by RTCA on September 29, 1989.

A 406 MHz ELT would operate at much higher power levels than the 121.5/243.0 MHz ELT. Batteries that have lithium chemistry appear to be the only logical power source for the 406 MHz ELT. Because the FAA is concerned about the safety characteristics of the lithium batteries, a review of TSO–C97 for lithium sulfur dioxide batteries is currently underway. That TSO was issued in August 1979 and is being assessed for its adequacy in view of current technology and its applicability to other types of lithium chemistry batteries.

The FAA does not foresee the need for any future rulemaking on mandatory carriage of 406 MHz ELTs within the continental United States; however, international requirements for these ELTs are under consideration by the International Civil Aviation Organization. Currently, there are no international agreements for carriage of 406 MHz ELTs. To move forward on the development of U.S. requirements, the FAA is considering a TSO for these ELTs, using RTCA/DO–204 standard as the reference document and is examining the safe use of the lithium batteries. Issuance of a TSO for 406 MHz ELTs would allow voluntary use of 406 MHz ELTs that are in compliance with the TSO.

Upgrade of Existing ELTs

There have been several inquiries from ELT manufacturers on whether it would be practical to modify existing units approved under TSO–C91, if such improvement modifications meet the requirements of TSO–C91a. Transport Canada, the Canadian counterpart of the DOT, is studying the potential for upgrading existing ELTs to the TSO–C91a standard. The study identified the following as necessary upgrade requirements: The new specifications for the G-switch, the ELT monitor, pilot accessible controls, satellite compatibility, environmental testing, and crash survivability. Preliminary cost information from the study estimates the improvements to be $700 per unit. Considering the cost of a new ELT and the age of most ELTs currently in use, the FAA views an ELT upgrade effort to be impractical.

G-Switch

After an exhaustive effort by RTCA to develop an improved G-switch specification, there continues to be scrutiny of its adequacy. Most critics question the low threshold limit (Gth=2.0+/-.3 Gs). The threshold limit is the number of G's below which the G-switch will not activate the ELT.

Late in 1987, the FAA's National Resource Specialist for Crash Dynamics evaluated the new G-switch specification and all related documents. Following is a summary of the evaluation:

- The TSO–C91a G-switch response curve is an appropriate specification for a longitudinal axis-sensitive ELT, although there is still a very limited potential for false alarms. The curve was defined for the purpose of sensing more than 80 percent of the survivable accidents while rejecting activations due to flight or ground loads such as turbulence, hard landings, and heavy braking (tire skidding occurs at approximately 0.8 G).
- Anyone installing an ELT should adhere to all installation guidelines contained in the new RTCA standard for mounting an ELT.
- The G-switch approved under TSO–C91 should be removed from service because of a high probability of false activation from airframe vibration and non-activation due to jamming.
- As TSO–C91a ELTs come into service, they should be field tested and/or reviewed closely.

The FAA believes that TSO–C91a provides an adequate G-switch specification for sensing an airplane crash and would minimize false alarms. In the event of a false activation, the ELT monitor would alert the pilot or ground personnel. Additionally, the RTCA Special Committee 160 has determined that this is an appropriate specification to be included in its standard for 406 MHz ELTs.

FCC Rulemaking

In February 1988, the Federal Communications Commission issued amendments to its rules to authorize additional types of modulation for ELTs and emergency position indicating radio beacons (the maritime equivalent of the ELT). Of particular interest is the requirement that ELTs manufactured after October 1988 have a clearly defined carrier frequency distinct from modulation sidebands. This is a satellite compatibility requirement and is also contained in TSO–C91a.

In the last 5 years, members of Congress and aviation oriented organizations have recommended that the FAA take action to address ELT problems. Requiring an ELT retrofit program has been deliberated and is the most controversial solution to the ELT

problems. Currently, there is general agreement among the members of organizations showing interest in the FAA's ELT program that these proposals will expedite the transition to the TSO–C91a ELTs and are appropriate for addressing the ELT problems.

Discussion of the Proposals

All future ELT installations in U.S.-registered airplanes would have to conform with TSO–C91a. For the purposes of this notice the term "future installations" apply to newly manufactured airplanes, and to replacement of existing ELTs as they become unusable or unserviceable after the effective date of this rulemaking. This action would be accomplished by replacing specific references to TSO–C91 in the FAR with a generic term "an approved ELT that is in operable condition", and by withdrawing all TSO–C91 authorizations issued to ELT manufacturers. In effect, this would allow TSO–C91a or any subsequent TSO issued for ELTs to be used as a basis for compliance with the FAR. TSO–C91 ELTs already installed in aircraft may be used until they become unusable or unserviceable.

Current production of unsold TSO–C91 ELTs for general aviation airplanes is sufficiently small that accumulation of such inventories is unlikely. The FAA expects this inventory to be completely depleted by the time this rule becomes effective.

Automatic ELT Requirements, 14 CFR Part 91

The proposed requirement for automatic ELTs would become effective 6 months after the effective date of the final rule. ELT activation failures and false alarms have been consistently high in years past and will continue in the future if corrective action is not taken. There has been no significant improvement in ELT performance through voluntary programs sponsored by the FAA, other government agencies, or organizations. Rulemaking action may be the most appropriate solution to problems associated with use of ELTs.

ELT Statistics

ELTs complying with TSO–C91a offer the potential for saving more lives in the event of an aircraft accident. Statistics from the Air Force Rescue Coordination Center (AFRCC) show that not having an ELT signal in an accident reduces chances of survival by 43 percent. In 1987, there were 16 missions where the ELT did not function and the length of time to locate the aircraft was greater than 72 hours. Thirty-five fatalities occurred in these accidents. Some survivors of the initial crash in these accidents could have been saved if the airplane's ELT had been functioning properly. To a lesser degree, false alarms have also contributed to the safety problems associated with use of ELTs. Due to the time needed to confirm an actual distress signal, false alarms often delay the dispatch of SAR forces. There are also cases where false alarms have blocked ELT signal emanating from another aircraft in the same local area. Additionally, the AFRCC estimates that $3.5 million in federal, state, and Civil Air Patrol volunteer resources are expended every year on ELT false alarm missions.

To quantify the safety improvements expected with the TSO–C91a ELTs, the FAA has accepted NASA's offer of technical assistance and requested that a study be made. This action was prompted by House of Representatives Report 99–212, accompanying its 1985 appropriation bill, H.R. 3038. The FAA has also requested the expertise of member agencies of the Interagency Committee on Search and Rescue and the NTSB. All previous ELT data, findings, and recommendations, mostly from accidents and the development of TSO–C91a, are now being consolidated with current data and results of recent projects. The study will include recent information from Transport Canada's ELT program. This material will help clarify ELT data and show the expected improvement in safety and the number of lives to be saved with the transition to improved TSO–C91a ELTs. Thus far, the study has verified the 97 percent false-alarm rate, the two-thirds failure-to-activate rate, and all of the statistics on ELTs contained in this notice.

The SAR system, using satellite-aided tracking, has helped rescue 609 persons from aircraft accidents since it was commissioned in 1982. The ELT is the weak link. Improved ELTs would allow this system to operate with greater efficiency. In this regard, it is helpful to understand the various components of the ELT statistics so that the ELT improvements can be measured against them.

The two-thirds failure-to-activate rate if the fraction derived from NTSB reports of ELTs that did not aid in locating aircraft accidents. There are 19 reasons for non-effectiveness or failure of these ELTs listed on NTSB accident forms. Examples include insufficient Gs to activate the switch, improper installation, battery dead, water submersion, fire damage, and unit not armed. The reasons can be divided into four basic groups: poor design, failures beyond the ELT's operational capability, lack of maintenance, and undetermined. NASA is reviewing the NTSB data base and other related data to estimate the number of lives that could be saved from each improvement contained in TSO–C91a and by improved ELT maintenance.

To understand the false alarm problem, it is beneficial to know how the reports of signals on the 121.5 MHz frequency are received and processed. These signals are received predominantly by the search and rescue satellite-aided tracking system. Some signals are received by over-flying aircraft monitoring 121.5 MHz and reporting through Air Traffic Control. This information is transferred to the U.S. Mission Control Center and disseminated to a proper land (operated by the U.S. Air Force) or sea (operated by the U.S. Coast Guard) Rescue Coordination Center. In 1988, the AFRCC documented receipt of 54,292 signals. Each of the signals was evaluated for correlation with a known or potential aircraft distress situation, or with previously received ELT signals. If no correlation was established, no action was taken until the signal was verified by another satellite pass, an over-flying aircraft, or information from the FAA identifying an overdue aircraft whose flight path was in the vicinity of the signal source. The time required to receive a second report of a signal for correlation varied from a few minutes to several hours, depending on the satellite coverage sequence or the presence of aircraft monitoring the emergency frequency.

In 1988, there were 5,768 instances of correlated signals that are referred to as incidents. The AFRCC initiated files on these incidents to document actions taken for locating the source of the signal. Of these incidents, AFRCC was unable to locate 1,863 of the signal sources through telephone investigation. The incidents then became AFRCC ELT missions. Federally-funded aircraft or ground forces were used to locate the sources of the signals. In 1988, 85 distress signal sources were located, 410 signal sources ceased to emit prior to their location, and 1,368 non-distress signal sources were located.

The AFRCC calculates the false alarm rate from ELT mission data by subtracting the number of distress missions from the total number of missions.

1988 ELT Missions

Distress	85 (4.6 percent)
Ceased	410 (22.0 percent)
Non-distress	1,368 (73.4 percent)
Total	1,863 (100 percent)

1988 ELT Missions—Continued

1988 false alarms (1,863 – 85)	1,778 (95.4 percent)

Note: The 1984–1988 average is 96.6 percent.

Aircraft missions is another important data base maintained by the AFRCC; it contains data on incidents in which SAR aircraft were launched because an aircraft was overdue, rather than as a result of an ELT distress signal. There were 191 aircraft missions of this type in 1988, on which 107 distressed aircraft were located. In only 11 cases did the ELT aid in locating the aircraft. No data was collected on why the ELT did not aid the SAR aircraft.

Overview

In view of the high failure-to-activate rate and number of false alarms experienced with ELTs manufactured under TSO–C91, the FAA proposes to require improved TSO–C91a ELTs for future installations. The FAA also proposes to terminate approval of ELTs manufactured to the specifications of TSO–C91. The FAA supports all reasonable efforts to improve ELTs when used in conjunction with the SAR system, and solicits comments with regard to a near-term retrofit program. The proposed compliance date may be changed in light of comments received. Based on the findings of the ELT testing at repair stations, the NASA study, and substantive comments obtained from this proposed rulemaking, the need for further rulemaking action will be considered at the time the final rule is issued. Amendments to existing regulations may be used to expedite the transition to TSO–C91a ELTs. The FAA may also amend the regulations to ensure that specific inspection criteria for continued airworthiness of ELTs (TSO–C91 and TSO–C91a) is accomplished. In this regard, the FAA solicits data and specific information.

Survival ELT Requirements, 14 CFR Parts 25, 29, 121, 125, and 135

The requirement for survival ELTs would become effective 2 years after issuance of a final rule. The FAA proposes additional time for ELT manufacturers to transition to the new standard for survival ELTs since no survival ELTs are currently being produced under TSO–C91a and the false alarms and failure-to-activate problems are not inherent in this ELT.

There has been little adverse service experience with survival ELTs, and they generally function properly in times of necessity. Few ditchings have occurred in recent years; therefore, little operational data with these ELTs have been collected. As indicated in the summary, this notice also addresses updating the TSO requirements for survival ELTs. The TSO–C91a improvements applicable to survival ELTs address the satellite compatibility and improved environmental and crash-survivability specifications. Improvements to the G-switch and ELT monitor do not apply to survival ELTs because they are manually or water-activated and are not as susceptible to false alarms. The long-term safety benefits of the improved requirements for survival ELTs cannot be ascertained; however, it is reasonable to assume that improved reliability could lead to an increase in the number of lives saved in future ditchings. The proposal to require improved TSO–C91a survival ELTs on all future installations in existing or newly-manufactured aircraft would ensure the transition to improved standards at a minimal cost.

One proposal is editorial in nature. The proposal would correct a typographical error found in the last sentence § 125.209(b). The word "probably" would be replaced with the word "probable".

Part 91 will be completely revised as of August 18, 1990 (see 54 FR 34284; August 18, 1989) to renumber all of its sections. Section 91.52 (Emergency locator transmitters) will be renumbered as § 91.207. The proposed amendment contains amendatory language for both versions of this section.

Regulatory Evaluation Summary

Executive Order 12291 dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society from the regulatory changes outweigh their potential costs. The order also requires the preparation of a draft regulatory impact analysis of all "major" proposals except those responding to emergency situations or other narrowly defined exigencies. A "major" proposal is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or significant adverse effects on competition.

The FAA has determined that this regulatory action is not a "major" action as defined in the executive order, so a full draft regulatory impact analysis identifying and evaluating alternative proposals has not been prepared. A more concise draft preliminary regulatory evaluation has been prepared, however, which includes estimates of the economic consequences of this regulation. This preliminary regulatory evaluation is included in the docket and quantifies, to the extent practicable, estimated costs to the private sector, consumers, and to Federal, State and local governments, as well as estimated anticipated benefits and impacts.

The reader is referred to the full regulatory evaluation contained in the docket for the full detailed analysis. This section contains only a summary of the full regulatory evaluation. This section also contains an initial regulatory flexibility determination as required by the Regulatory Flexibility Act of 1980 and a trade impact assessment.

This preliminary regulatory evaluation examines the costs and benefits of the Notice of Proposed Rulemaking (NPRM) amending parts 25, 29, 91, 121, 125 and 135 of the Federal Aviation Regulations (FAR). The notice proposes to terminate the manufacture of TSO–C91 standard Emergency Locator Transmitters (ELTs), and require all new installations of ELTs to conform to the improved standards specified in TSO–C91a.

A range of costs is employed in this report to account for uncertainty about the additional cost per unit of TSO–C91a specification ELTs. Both costs and benefits for required new installations of automatically-activated (automatic ELTs) and survival type ELTs (survival ELTs) are examined over a 10-year evaluation period, from 1991 to 2000. This assumes that a final rule requiring TSO–C91a ELTs for all new civilian general aviation airplane installations will be issued by mid-1990.

Production and installation of automatic ELTs, as mandated by this proposed rule, are expected to begin 6 months after the rule's effective date. Production and installation of survival ELTs are expected to commence 2 years after the rule's effective date.

Costs of Automatic ELTs

Additional costs of switching production from TSO–C91 ELTs to the TSO–C91a standard are estimated to range from $150 to $400 per unit. This analysis employs both cost figures, providing both a low-side and a high-side forecast. Nonetheless, the FAA believes that the low-side cost estimates would more accurately project the costs that will, in fact, be imposed on the industry. If the proposed rules are implemented, the price of TSO–C91a specification ELTs should drop significantly due to economies of scale associated with large-scale production, as well as to competitive influences. Several manufacturers surveyed have estimated that there would be no

additional installation costs for TSO–C91a ELTs, although others mentioned the possibility of some additional labor costs. The FAA conservatively estimates $75 per unit in additional installation costs, primarily for installation of wiring, cockpit controls and mounting.

Any additional weight penalty of TSO–C91a units, compared to TSO–C91 units, is negligible. Therefore, these proposed rules are not expected to cause a significant increase in aircraft fuel consumption.

Also, costs of unsold TSO–C91 ELT inventory left over after the compliance deadline of this rule are expected to be negligible. Current production of unsold TSO–C91 ELTs for general aviation airplanes is sufficiently small that accumulation of such inventories is unlikely. The FAA expects this inventory to be completely depleted by the time this rule becomes effective.

The size of the current and future ELT market in the U.S., in the absence of a required retrofit, is assumed to be approximately 3,000 units annually (approximately 1.5% of the current fleet). This assumption is very conservative, in light of the fact that U.S. general aviation aircraft shipments have steadily declined from a high of nearly 18,000 in 1978, to 1,085 units in 1987. Because the fleet of general aviation airplanes is projected to show little growth through the end of this century, the FAA assumes that the future ELT market will remain relatively constant.

Assuming an additional cost of $150 per ELT unit plus $75 for installation, this proposed rulemaking would result in estimated annual costs for automatic ELTs of $675,000. Over the 1991–2000 evaluation period, estimated costs would total $6.8 million in 1988 dollars, and $3.4 million discounted to present value (10% discount rate).

Assuming an additional cost of $400 per ELT unit plus $75 for installation, this proposed rulemaking would result in estimated annual costs for automatic ELTs of $1,425,000. Over the 1991–2000 evaluation period, estimated costs would total $14.3 million in 1988 dollars, and $7.2 million discounted to present value (10% discount rate).

Costs of Survival ELTs

A manufacturer of survival ELTs estimates that each unit produced to TSO–C91 standards costs $3,500 (in 1988 dollars), and that upgrading production to TSO–C91a standards would increase the cost by 25 to 35 percent per unit, or $875 to $1,225. This cost includes allocated development and testing expenses (estimated to be $300,000–$600,000 for a given firm). For purposes of this analysis, the FAA uses both cost-per-unit estimates in calculating total costs.

Again, as for the automatic ELTs, the FAA believes that the price of TSO–C91a survival ELTs will be significantly reduced due to economies of scale and competition factors, if this proposed rule is implemented. Therefore, the low-side cost estimate of $875 per unit is projected to be the more accurate estimate.

No additional installation costs are expected nor have any additional fuel costs due to added weight been projected for TSO–C91a survival ELTs.

Current rules require survival ELTs for use in life rafts in transport category airplanes and rotorcraft. A major manufacturer of survival ELTs estimates 900 annual industry-wide survival ELT sales in the U.S. A portion of these sales go to aircraft manufacturers and are installed in aircraft to be used by foreign operators. The FAA estimates that 50 percent of total U.S. sales, or approximately 450 units annually, are used in U.S.-operated aircraft, and thus would be subject to this proposed rulemaking. Approximately 3,700 new survival ELT installations are expected over the 1991–2000 evaluation period.

Assuming an additional cost of $875 per unit, the proposed rulemaking to require all new installations of survival ELTs to conform to TSO–C91a will result in total 10-year costs over the 1991–2000 evaluation period of $3.3 million in 1988 dollars, and $1.5 million discounted present value (10 percent discount rate).

Assuming an additional cost of $1,225 per unit, total 10-year costs over the 1991–2000 evaluation period are estimated to be $4.6 million in 1988 dollars, and $2.1 million discounted to present value (10 percent discount rate).

Total Costs of the Proposed Rule

Total costs over the 1991–2000 evaluation period of requiring all new installations of both automatic and survival ELTs to conform to TSO–C91a specifications are expected to range from $10.1 to $18.9 million, in 1988 dollars, and $4.9 to $9.3 million, discounted to present value (10 percent discount rate).

A summary of the range of costs is shown below:

[In millions of dollars]

	Cost in 1988 dollars	Discounted present value cost
Automatic ELT	$6.8–$14.3	$3.4–$7.2
Survival ELT	$3.3–$4.6	$1.5–$2.1
Total cost of proposed rule	$10.1–$18.9	$4.9–$9.3

Benefits of Automatic ELTs

Two distinct types of benefits would be derived from this rulemaking:

(1) A reduction in resources spent in search and rescue efforts to locate false alarms. According to officials of the Aerospace Rescue and Recovery Service, approximately $2 million in Federal resources is spent annually responding to false alarms. The AFRCC estimates that the total resources spent responding to false alarms is $3.5 million annually. As previously discussed under ELT statistics, the known false alarm rate is about 97 percent of the total ELT alarms. Thus, any improvement in the quality of automatic ELTs that can reduce the number of false alarms has the potential to significantly reduce unnecessary search and rescue expenditures.

(2) Significantly higher benefits can be obtained by reducing the potential for ELTs failing to activate in accidents. According to the Aerospace Rescue and Recovery Service, the probability of death occurring while awaiting rescue increases substantially after 24 hours. If efforts to locate a downed aircraft take longer than 72 hours, any survivors of the initial impact will, most likely, have died in the intervening period.

According to the Aerospace Rescue and Recovery Service, in 1987, the average time to locate a downed aircraft when the ELT was functioning was 13.7 hours. In contrast, the average time to locate a downed aircraft with no ELT signal was 55.6 hours. In 1987, 16 missions required longer than 72 hours to locate a downed aircraft; 35 fatalities occurred in these accidents.

Statistics show that only about 3 percent of ELTs involved in accidents activate. Thus, significant improvements are possible in the effectiveness rate of ELTs in accidents. Any improvement in ELT effectiveness would cause a reduction in the time to locate downed aircraft and, therefore would have the potential to result in significant safety benefits in terms of lives saved.

Benefits of Reducing False Alarms

As a greater percentage of the general aviation fleet is covered by TSO–C91a standard ELT units through new installations, resulting in a lower false alarm rate, the costs of search and rescue efforts should be reduced. Assuming that (1) 3,000 TSO–C91a specification units are installed annually, (2) total costs of responding to false alarms are $3.5 million annually, an (3) TSO–C91a units are only 50% effective, on average, in reducing false alarms, then total benefits of the reduction in false alarms over the 1991–2000 evaluation period will be $1.4 million, in 1988 dollars, or $630,000 discounted to present value (10% discount rate).

Benefits of Increasing ELT Activation in Accidents

The net costs of requiring automatic ELTs that conform to the TSO–C91a standards would range from $5.3 million to $12.8 million in 1988 dollars, after subtracting out the $1.4 million in potential benefits that would accrue from a reduction in false alarms. If the additional cost per unit of new installations of automatic ELTs is $150, then at least 6 lives would have to be saved between 1991 and 2000, in order for the benefits of the proposed rule to exceed its $5.3 million net cost. For the purpose of quantifying benefits of this rule, a minimum value of $1 million is used to statistically represent a human life.

If the additional cost per unit is $400, then at least 13 lives would have to be saved between 1991 and 2000, in order for the benefits of the proposed rule to exceed its $12.8 million net cost. In determining the likelihood of such benefits, it is important to note that average fleet coverage by TSO–C91a ELTs would be about 8.3% during the 1991–2000 period.

If historical trends continue, more than 11,000 general aviation fatalities are expected to occur between 1991 and 2000 (NTSB data indicates that approximately 11,780 fatalities occurred between 1977 and 1986). Even with only 8.3% of the general aviation fleet covered by automatic ELTs on average, it does not seem unreasonable to project that this rulemaking could prevent at least 6 to 13 fatalities during the 1991–2000 period.

This conclusion is strengthened by noting again that 35 fatalities occurred in one year—1987—in accidents where search and rescue forces took longer than 72 hours to locate the downed aircraft. This proposed rule would have to prevent at most 2 out of these 35 fatalities each year in order for the rule's benefits to exceed its cost.

Benefits of Survival ELTs

Over the course of the 1991–2000 evaluation period, at least 4 lives must be saved in order for the benefits of the proposed rule to exceed the $3.3 million cost of the required installations of TSO–C91a survival ELTs, assuming that the additional per-unit cost is $875. At least 5 lives would have to be saved if the additional per-unit cost is assumed to be $1,225.

Historical data indicates that 38 preventable drownings occurred in the 25-year period from 1962 to 1986 in part 121 operations, and 91 preventable drownings occurred between 1967 and 1986 in part 135 operations. This equates to a rate of 15 preventable drownings every 10 years for part 121 operations, and 46 preventable drownings every 10 years for part 135 operations, or a total of 61 preventable drownings every 10 years. Preventable drownings are fatalities that occurred in aircraft ditchings or inadvertent water impacts, due to drowning and no other cause.

Therefore, it must be shown that at least 4 to 5 of the 61 preventable drownings expected to occur in part 121 and 135 operations during a given 10 year period could be prevented in order for the benefits of the proposed rule to outweigh its cost.

Only one successful search and rescue operation involving an improved survival ELT installed in a ditched aircraft is needed to justify the small additional expenditure on this equipment.

Comparison of Costs and Benefits

Total 10-year costs of these proposed rules are projected to range from $10.1 million to $18.9 million (in 1988 dollars), and $4.9 million to $9.3 million (discounted to present value). The number of prevented fatalities needed to justify these expenditures is shown in the following table:

RANGE OF PREVENTED FATALITIES NEEDED TO JUSTIFY THE COSTS OF THIS PROPOSED RULE

Source of prevented fatalities	Lives saved	
	Over 10 years	Per year
Automatic ELTs	6–13	1–2
Survival ELTs	4–5	(1)
Total	10–18	1–2

[1] 1 life saved every other year.

The FAA believes that this proposed rule effectively could save the maximum number of lives—18 over 10 years, or 2 per year—in light of the history of fatalities due to delayed search and rescue missions. Therefore, the FAA predicts that the benefits of this proposed rule would outweigh its cost.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, "Regulatory Flexibility Criteria and Guidance," establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions.

The small entities potentially affected by the proposed rules are parts 121, 125, and 135 operators that own nine or fewer aircraft, which is the size threshold for aircraft operators. The cost thresholds are $92,400 for operators of scheduled services with entire fleets having a seating capacity of over 60; $51,700 for other scheduled operators; and $3,600 for unscheduled operators.[1] A substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed rule.

The most likely entities to sustain a significant economic impact as a result of the proposed rules are unscheduled operators that operate extensively over water and are purchasing new aircraft with both automatic and survival ELT's. These operators would have to purchase at least two aircraft in a year in order to exceed the $3,600 threshold, assuming the highest range of estimated cost for each type of ELT.

The FAA does not expect that the proposed rules will have a significant economic impact on a substantial number of small entities because it is unlikely that 11 or more small entities will be purchasing two or more new aircraft in any given year. Small entities most likely will not be affected because generally they purchase used aircraft to conduct their operations.

Trade Impact Assessment

The proposed rules will have little or no impact on trade for either U.S. firms doing business in foreign countries or foreign firms doing business in the

[1] Thresholds appearing in the order have been inflated from 1986 to 1989 dollars using the Consumer Price Index appearing in "FAA Aviation Forecasts, Fiscal Years 1989–2000 (FAA–APO–89–1) March 1989.

United States. The proposed rules will affect only U.S. air carriers and operators. Foreign air carriers are prohibited from operating between points within the United States. Therefore, they would not gain any competitive advantage over the domestic operations of U.S. carriers. In international operations, foreign air carriers are not expected to realize any cost advantage over U.S. carriers because many foreign countries have ELT requirements as stringent as those proposed here. Moreover, the differential in costs between the current and proposed ELT rules would not be significant enough to affect adversely the international operations of U.S. carriers. Further, general aviation operations conducted in the United States are not in direct competition with foreign enterprises. For these reasons, the FAA does not expect that the proposed rules will result in any international trade impact.

Federalism Implications

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

Conclusion

The FAA has determined that the potential benefits of the proposed regulation outweigh its potential cost and that it is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have a significant economic impact, beneficial or detrimental, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Air transportation, Safety.

14 CFR Part 29

Aircraft, Aviation safety, Air transportation, Safety.

14 CFR Part 91

Air carriers, Aircraft, Airworthiness directives and standards, Aviation safety, Safety, Aircraft.

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Air transportation, Common carriers, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Airplanes, Airports, Air transportation, Airworthiness, Pilots.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Airplanes, Airspace, Aviation safety, Air taxi, Air transportation, Airworthiness, Pilots, Safety, Transportation.

The Proposed Amendment

In consideration for the foregoing, the Federal Aviation Administration proposes to amend parts 25, 29, 91, 121, 125, and 135 of the Federal Aviation Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 49 CFR 1.47(a); Pub. L. 100–202, December 22, 1987.

2. Section 25.1415 is amended by revising paragraph (d) to read as follows:

§ 25.1415 Ditching equipment.

* * * * *

(d) There must be an approved survival type emergency locator transmitter for use in one life raft.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

3. The authority citation for part 29 is revised to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421 (as amended by Pub. L. 100223, December 30, 1987), 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); Pub. L. 100–202, December 22, 1987.

4. Section 29.1415 is amended by revising paragraph (d) to read as follows:

§ 29.1415 Ditching equipment.

* * * * *

(d) There must be an approved survival type emergency locator transmitter for use in one life raft.

PART 91—GENERAL OPERATING AND FLIGHT RULES

5. The authority citation for part 91 is revised to read as follows:

Authority: 49 U.S.C. 1301 (7), 1303, 1344, 1348, 1352–1355, 1401, 1421 (as amended by Pub. L. 100–223, December 30, 1987), 1422–1431, 1471, 1472, 1502, 1510, 1522, and 2121–2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq;* E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); Pub. L. 100–202, December 22, 1987.

If adopted, the following proposals will be reflected in part 91 in effect as of the date of issuance of this notice of proposed rulemaking:

6. Section 91.52 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (d)(2) to read as follows:

§ 91.52 Emergency locator transmitters.

* * * * *

(b) * * *

(1) For operations governed by the supplemental air carrier and commercial operator rules of part 121 of this chapter, or the air travel club rules of part 123 of this chapter, there must be attached to the airplane an approved automatic type emergency locator transmitter that is in operable condition.

(2) For charter flights governed by the domestic and flag air carrier rules of part 121 of this chapter, there must be attached to the airplane an approved automatic type emergency locator transmitter that is in operable condition.

(3) For operations governed by part 135 of this chapter, there must be attached to the airplane an approved automatic type emergency locator transmitter that is in operable condition.

(4) For operations other than those specified in paragraphs (b) (1), (2), and (3) of this section, there must be attached to the airplane an approved personal type or an approved automatic type emergency locator transmitter that is in operable condition.

* * * * *

(d) * * *

(2) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of charge) has expired, as established by the

transmitter manufacturer under its approval.

If adopted, the following proposals will be reflected in part 91 as it will be revised on August 18, 1990:

7. Section 91.207 is amended by revising paragraph (a)(1) introductory text, (a)(2), and the introductory language of (c)(2) to read as follows:

§ 91.207 Emergency locator transmitters.

* * * * *

(1) There is attached to the airplane an approved automatic type emergency locator transmitter that is in operable condition for the following operations:

* * * * *

(2) For operations other than those specified in paragraph (a)(1)(i) of this section, there must be attached to the airplane an approved personal type or an approved automatic type emergency locator transmitter that is in operable condition.

* * * * *

(c) * * *

(2) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of charge) has expired, as established by the manufacturer under its approval.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

8. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421 (as amended by Pub. L. 100–223, December 30, 1987), 1422–1430, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); Pub. L. 100–202, December 22, 1987.

9. Section 121.339 is amended by revising paragraph (a)(4) to read as follows:

§ 121.339 Emergency equipment for extended over-water operations.

(a) * * *

(4) An approved survival type emergency locator transmitter. Batteries used in this transmitter must be replaced (or recharged, if the battery is rechargeable) when the transmitter has been in use for more than 1 cumulative hour, and also when 50 percent of their useful life (or for rechargeable batteries, 50 percent of their useful life of charge) has expired, as established by the transmitter manufacturer under its approval. The new expiration date for the replacement (or, recharged) battery must be legibly marked on the outside of the transmitter. The battery useful life (or useful life of charge) requirements of this paragraph do not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

* * * * *

10. Section 121.353 is amended by revising paragraph (b) to read as follows:

§ 121.353 Emergency equipment for operations over uninhabited terrain areas: flag and supplemental air carriers and commercial operators.

* * * * *

(b) An approved survival type emergency locator transmitter. Batteries used in this transmitter must be replaced (or recharged, if the battery is rechargeable) when the transmitter has been in use for more than 1 cumulative hour, and also when 50 percent of their useful life (or for rechargeable batteries, 50 percent of their useful life of charge) has expired, as established by the transmitter manufacturer under its approval. The new expiration date for the replacement (or, recharged) battery must be legibly marked on the outside of the transmitter. The battery useful life (or useful life of charge) requirements of this paragraph do not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

* * * * *

PART 125—CERTIFICATION AND OPERATION: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MINIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

11. The authority citation for part 125 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 (as amended by Pub. L. 100–223, December 30, 1987), 1422–1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); Pub. L. 100–202, December 22, 1987.

12. Section 125.209 is amended by revising paragraph (b) to read as follows:

§ 125.209 Emergency equipment: Extended overwater operations.

* * * * *

(b) No person may operate an airplane in extended overwater operations unless there is attached to one of the life rafts required by paragraph (a) of this section, an approved survival type emergency locator transmitter. Batteries used in this transmitter must be replaced (or recharged, if the batteries are rechargeable) when the transmitter has been in use for more than 1 cumulative hour, and also when 50 percent of their useful life (or for rechargeable batteries, 50 percent of their useful life of charge) has expired, as established by the transmitter manufacturer under its approval. The new expiration date for the replacement or recharged batteries must be legibly marked on the outside of the transmitter. The battery useful life or useful life of charge requirements of this paragraph do not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

PART 135—AIR TAXI OPERATIONS AND COMMERCIAL OPERATORS

13. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 (as amended by Pub. L. 100–223, December 30, 1987), 1422–1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); Pub. L. 100–202, December 22, 1987.

14. Section 135.167(c) is amended by revising paragraph (c) to read as follows:

§ 135.167 Emergency equipment: Extended overwater operations.

* * * * *

(c) No person may operate an airplane in extended overwater operations unless there is attached to one of the life rafts required by paragraph (a) of this section, an approved survival type emergency locator transmitter. Batteries used in this transmitter must be replaced (or recharged, if the batteries are rechargeable) when the transmitter has been in use for more than 1 cumulative hour, and also when 50 percent of their useful life (or for rechargeable batteries, 50 percent of their useful life of charge) has expired, as established by the transmitter manufacturer under its approval. The new expiration date for the replacement or recharged batteries must be legibly marked on the outside of the transmitter. The battery useful life or useful life of charge requirements of this paragraph do not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

Technical Standard Order

Pursuant to § 21.621 of the Federal Aviation Regulations, the FAA proposes to withdraw each TSO authorization for automatic type ELTs with a proposed effective date of (a date 6 months after the effective date of this amendment) and for survival type ELTs with a proposed effective date of (a date 2 years after the effective date of this

amendment) to the extent that it authorizes the holder to identify or mark ELTs with TSO–C91.

Issued in Washington, DC, on March 23, 1990.

David W. Ostrowski,

Acting Director, Aircraft Certification Service.

[FR Doc. 90–7436 Filed 3–30–90; 8:45 am]

BILLING CODE 4910–13–M

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Monday, April 2, 1990

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12163-12326.....2

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List March 30, 1990

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$11.00	Jan. 1, 1990
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
5 Parts:		
1–699	15.00	Jan. 1, 1989
*700–1199	13.00	Jan. 1, 1990
1200–End, 6 (6 Reserved)	13.00	Jan. 1, 1989
7 Parts:		
0–26	15.00	Jan. 1, 1990
27–45	12.00	Jan. 1, 1990
46–51	17.00	Jan. 1, 1990
52	24.00	Jan. 1, 1990
53–209	18.00	Jan. 1, 1989
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400–699	19.00	Jan. 1, 1989
700–899	22.00	Jan. 1, 1989
900–999	28.00	Jan. 1, 1989
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*1060–1119	13.00	Jan. 1, 1990
1120–1199	10.00	Jan. 1, 1990
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1500–1899	10.00	Jan. 1, 1989
1900–1939	11.00	Jan. 1, 1989
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*2000–End	9.50	Jan. 1, 1990
8	13.00	Jan. 1, 1989
9 Parts:		
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10 Parts:		
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51–199	17.00	Jan. 1, 1989
200–399	13.00	[3] Jan. 1, 1987
*400–499	21.00	Jan. 1, 1990
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200–219	11.00	Jan. 1, 1989
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280–399	14.00	Apr. 1, 1989
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1, 1–11 to Appendix, 2 (2 Reserved)	13.00	[5] July 1, 1984
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7	6.00	[5] July 1, 1984
8	4.50	[5] July 1, 1984
9	13.00	[5] July 1, 1984
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Subscription (mailed as issued)	188.00	1989

Title	Price	Revision Date
Individual copies	2.00	1990

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

CFR ISSUANCES 1990
January 1990 Editions and Projected April, 1990 Editions

This list sets out the CFR issuances for the January 1990 editions and projects the publication plans for the **April, 1990** quarter. A projected schedule that will include the **July, 1990** quarter will appear in the first **Federal Register** issue of July.

For pricing information on available 1989–1990 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1990 editions:

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3 (Compilation)*
4*
5 Parts:
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700–1199*
1200–End*
6 [Reserved]
7 Parts:
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27–45*
46–51*
52*
53–209*
210–299*
300–399*
400–699*
700–899*
900–999*
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9 Parts:
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200–End*
10 Parts:
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51–199*
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 2	April 17	May 2	May 17	June 1	July 2
April 3	April 18	May 3	May 18	June 4	July 2
April 4	April 19	May 4	May 21	June 4	July 3
April 5	April 20	May 7	May 21	June 4	July 5
April 6	April 23	May 7	May 21	June 5	July 5
April 9	April 24	May 9	May 24	June 8	July 8
April 10	April 25	May 10	May 25	June 11	July 9
April 11	April 26	May 11	May 29	June 11	July 10
April 12	April 27	May 14	May 29	June 11	July 11
April 13	April 30	May 14	May 29	June 12	July 12
April 16	May 1	May 16	May 31	June 15	July 16
April 17	May 2	May 17	June 1	June 18	July 16
April 18	May 3	May 18	June 4	June 18	July 17
April 19	May 4	May 21	June 4	June 18	July 18
April 20	May 7	May 21	June 4	June 19	July 19
April 23	May 8	May 23	June 7	June 22	July 23
April 24	May 9	May 24	June 8	June 25	July 23
April 25	May 10	May 25	June 11	June 25	July 24
April 26	May 11	May 29	June 11	June 25	July 25
April 27	May 14	May 29	June 11	June 26	July 26
April 30	May 15	May 30	June 14	June 29	July 30