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



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

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

WASHINGTON, DC

- WHEN:** May 24, at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
- RESERVATIONS:** 202-523-5240.

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1006, 1012, and 1013

[DA 90-016]

Milk in Upper Florida, Tampa Bay, and Southeastern Florida Marketing Areas; Order Terminating A Provision of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action terminates a provision of the Upper Florida, Tampa Bay and Southeastern Florida milk orders. The action removes the plant location adjustment provision in each of the three orders which provides that the price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant. The action stems from a decision of the United States District Court for the District of New Jersey which found that the above-mentioned provision contained in all three orders is unsupported by substantial evidence in the record of the rulemaking proceeding and is therefore not in accordance with law.

EFFECTIVE DATES: April 26, 1990.

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

SUPPLEMENTARY INFORMATION: This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the orders regulating the handling of milk in

the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas.

Notice of proposed rulemaking, public procedure thereon, and 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest, because this action merely removes an order provision which was held to be unsupported by substantial evidence, and therefore not in accordance with law.

Basis for Termination of Provisions

On May 15, 1989, the United States District Court for the District of New Jersey is a case filed by Cumberland Farms, Inc. against the Secretary of Agriculture held the following provision found in three Florida milk orders in §§ 1006.52(a), 1012.52(a), and 1013.52(a) to be unsupported by substantial evidence and not in accordance with law:

"Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant."

The Government did not appeal the District Court's decision in this case, and that decision is now final. Therefore, it is found that since the above provision is no longer enforceable, it cannot be used to effectuate the declared policy of the Act, and should be terminated.

List of Subjects in 7 CFR Parts 1006, 1012, and 1013

Milk marketing orders.

It is therefore ordered, That the aforesaid provision in §§ 1006.52(a), 1012.52(a), and 1013.52(a) which reads "Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant:" is hereby terminated.

PARTS 1006, 1012, AND 1013— [AMENDED]

1. The authority citation for 7 CFR parts 1006, 1012, and 1013 continues to read as follows:

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

§§ 1006.52 [Amended]

2. In §§ 1006.52(a), 1012.52(a), and 1013.52(a), the provision "Provided, That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant:" is removed.

Signed at Washington, DC, on April 20, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-9699 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 068CE, Special Condition 23-ACE-46]

Special Conditions; Pilatus Model PC-12 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are being issued to become part of the type certification basis for the Pilatus Model PC-12 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These novel and unusual design features include the installation of electronic displays and the protection of them from indirect effects of lightning and high energy radiated electromagnetic fields (HERF), and evacuation of fumes from pressurized airplanes for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: May 29, 1990.

FOR FURTHER INFORMATION CONTACT:

Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Service, Central Region, Federal Aviation Administration, room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:**Background**

On June 20, 1988, Pilatus Aircraft Limited made an application for type certificate approval of the Model PC-12 Series airplane to the FAA and made an application to the Swiss Federal Office for Civil Aviation (FOCA) on July 10, 1986. The Model PC-12 airplane is a pressurized, single-engine turboprop, of conventional metal material, with provisions for carrying nine passenger seats with a maximum altitude of 25,000 feet. The installation incorporates an electronic attitude director indicator (EADI) and an electronic horizontal situation indicator (EHSI) instead of the traditional mechanical or electromechanical displays providing similar information to the flight crew.

Type Certification Basis

The type certification basis for the Pilatus Model PC-12 Series airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR) § 21.29; normal category of part 23 of the FAR, effective February 1, 1965, including amendments 23-1 through 23-36; SFAR 27 effective February 1, 1974, as amended by amendments 27-1 through 27-5; part 36, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions adopted herein.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.7(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Pilatus Model PC-12 Series airplane contains a number of novel and unusual design features not envisaged by the applicable airworthiness standards.

Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the Pilatus Model PC-12 Series airplane. These special conditions will also be applicable to all Pilatus Model PC-12 Series airplanes, including the installation of similar EFIS, without further amendment of the special conditions.

Electronic Flight Instrument System (EFIS)

The proposed cathode-ray tube (CRT) electronic display units will contain primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and an EHSI on the pilot side of the instrument panels. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments. On some later installations, another EADI and EHSI may be installed on the copilot side.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electromechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions, including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness standards. Current small airplane airworthiness standards are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane airworthiness standards envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. When the current airworthiness standards of part 23 were written, only

mechanical or electromechanical instruments that functioned independently for each parameter were envisioned. The requirements intended that airspeed, altitude, and magnetic compass information remain available to the pilot after total failure of the airplane's normal electrical power. Standby instruments for flight instruments are not required by the small airplane airworthiness standards because the FAA has long accepted that the small airplane could be flown safely by using partial panel techniques following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included requirements for the pilot to demonstrate the ability to fly the airplane safely following failure of any one of the previously cited instruments.

The special conditions will provide appropriate requirements for installation of electronic displays featuring design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special conditions will also provide requirements to assure adequate reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

For installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This concerns the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special conditions include requirements needed for their certification.

The special conditions will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the special condition.

The existing § 23.1309, which was incorporated into part 23 by amendment 23-14, dated December 20, 1973, has been used as a means of evaluating systems for those airplanes that include § 23.1309 in their type certification basis. The "no-single-fault" or "failsafe" concept of § 23.1309, along with

experience based on service-proven designs and good engineering judgment, have been used to successfully evaluate most airplane systems and equipment. The type certification basis for this airplane includes § 23.1309; however, the "single fault" concept does not provide an adequate means for determining and evaluating the effect of certain failure conditions that may exist in complex systems such as an EFIS installation. Therefore, the FAA considers it necessary to include the additional system analysis requirements in the certification basis. This will also allow the use of the "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur. Rational methods for showing compliance for safety assessment of systems may be shown by the use of numerical analysis, but it is not mandatory. In many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently a more acceptable substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform critical functions, it will be necessary to show that those systems meet more stringent requirements. These systems would be required to establish either that there will be no failures of that system or that a failure is extremely improbable. Critical functions means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane. These special conditions provide reliability requirements that are based on the criticality of the system's function and provide the airworthiness standards needed for certification of complex safety-critical systems being proposed for installation.

The special conditions also require that the occurrence of system(s) failures that would significantly reduce the airplane's capability or the ability of the crew to cope with adverse operating

conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree leading to potentially catastrophic results.

Protection of Systems From High Energy Radiated Electromagnetic Fields (HERF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the high energy radiated electromagnetic fields (HERF) incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation that was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

At present, aircraft certification requirements, as well as the industry standards for protection from the adverse effects of HERF, are inadequate in view of the aforementioned technological advances. In addition, some significant safety events have been reported of incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to high energy radiated electromagnetic fields (HERF) must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are:

(1) The increasing use of sensitive electronics that perform critical functions;

(2) The reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials;

(3) The adverse service experience of military airplanes that use these technologies; and

(4) The increase in the number and power of radio frequency emitters and expected future increases.

Cognizant of the need for aircraft certification standards to cope with the developments in technology and environment in 1986, the FAA initiated a high priority program;

(1) To determine and define the electromagnetic energy levels;

(2) To develop and describe guidance material for design, test, and analysis; and

(3) To prescribe and promulgate regulatory standards. The FAA sought and received the participation of international airworthiness authorities and industry to develop internationally recognized standards for certification.

At this time, the FAA and other airworthiness authorities have established an agreed level of HERF environment that the airplane is expected to be exposed to in service. While the HERF requirements are being finalized, the FAA has adopted special conditions for the certification of aircraft that employ electrical and electronic systems that perform critical functions. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HERF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HERF environment, defined below, or

Field Strength Volts/Meter

Frequency	Peak	Average
10-500 KHz.....	80	80
500-2000.....	80	80
2-30 MHz.....	200	200
30-100.....	33	33
100-200.....	33	33
200-400.....	150	33
400-1000.....	8.3K	2K
1-2 GHz.....	9K	1.5K
2-4.....	17K	1.2K
4-6.....	14.5K	800
6-8.....	4K	666
8-12.....	9K	2K
12-20.....	4K	509
20-40.....	4K	1K

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak of electromagnetic field strength of 100 volts per meter (v/m) in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HERF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HERF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, instead of the HERF envelope, may be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without design upgrade. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the aircraft. The systems that perform critical functions, as identified by the hazard analysis, are candidates for the application of HERF requirements. The primary electronic flight display and the full authority digital engine control (FADEC) systems are examples of systems that perform critical functions. A system may perform both critical and noncritical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HERF

requirements only apply to critical functions.

Compliance with HERF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HERF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HERF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test, based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and will need to be independently assessed for each application for approval by the FAA.

Protection of EFIS from Indirect Effect of Lightning

Concern for the vulnerability of airplane electronic systems to the effects of lightning has increased substantially over the past few years due to the use of solid-state components and digital electronics in airplane systems that are susceptible to transient effects of induced electrical current and voltage caused by either a direct lightning strike to the airplane or by the electric fields created by a nearby lightning flash. These induced transient currents and voltages can degrade electronic system performance by damaging components or upsetting system functions.

The regulations incorporated by reference include standards for protection from lightning damage to the structure of the airplane (§ 23.867) and from lightning ignition of fuel vapor (§ 23.954). However, these standards do not provide the level of safety for the EFIS that is inherently provided by traditional mechanical or electromechanical displays providing similar information to the flight crew.

The advent of an advanced electronic system in airplane designs requires additional consideration be given to protect these systems from the indirect effects of lightning. Increased dependence on electronic equipment for safe operation of an airplane makes adequate protection of that equipment a primary requirement.

The Society of Automotive Engineers (SAE) and the Radio Technical Commission for Aeronautics (RTCA) has developed acceptable methods and procedures for determining compliance with these special conditions. They are as follows: SAE AE4L Committee Report AE4L-87-3, REV B, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning", dated October 1989, and RTCA DO-160B, section 22, "Lightning Induced Transient Susceptibility", dated March 8, 1988. SAE Report AE4L-87-3, REV B provides procedures to verify the protection of systems installed in an aircraft, while section 22 of RTCA DO-160B, provides methods to qualify equipment prior to installation in an aircraft.

Cockpit Evacuation of Noxious/Toxic Fumes

Small airplanes have typically been unpressurized where noxious/toxic fumes could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate noxious/toxic fumes without creating an unsafe condition. The Pilatus Model PC-12 airplane will not have noxious/toxic fume evacuation provisions because of higher differential pressures and longer times needed to depressurize and ventilate the cockpit. Because of the need to maintain an acceptable environment at the maximum operating altitudes of this airplane, this notice proposes special conditions to require the capability to evacuate noxious/toxic fumes from the cockpit and to require the ventilation air for normal operations to be free of harmful or hazardous concentrations of gases and vapors.

Conclusion

In review of the design features discussed for the installation in the Pilatus Model PC-12 Series airplane, the following special conditions are issued to provide a level of safety equivalent to that intended by the regulations incorporated by airworthiness standards. This action is not a rule of general applicability and affects only the model/series of airplanes identified in these special conditions.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 43417; October 25, 1989), (54 FR 41955; October 13, 1989), (53 FR 14782; April 26, 1988), and (51 FR 37711; October 24, 1986). Also, special conditions with similar requirements have been promulgated without public procedures because the FAA has determined that good cause existed for immediate adoption (55 FR 270; January 4, 1990) and (54 FR 51870; December 19, 1989). For this reason, and because a delay would significantly affect the applicant's installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective 30 days from the date of publication.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special conditions are issued as part of the type certification basis for the Pilatus Model PC-12 Series airplanes:

1. Electronic Flight Instrument Displays

In addition to, and instead of, the applicable airworthiness standards of Part 23 and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more

than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine whether the airplane is dependent upon its function for continued safe flight and landing and whether its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action that would create additional hazards.

(4) Compliance with the requirements of this special condition may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunction and damage from foreseeable sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed in lieu of mechanical or electromechanical instruments if:

(1) The electronic display indicators:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation, do not inhibit the primary display of attitude; and

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this section.

2. Protection of Electronic Flight Instrument Systems from Indirect Effects of Lightning and High Energy Radiated Electromagnetic Fields (HERF)

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to:

(1) Lightning and

(2) High energy radiated electromagnetic fields external to the airplane.

(b) Each essential function of the system must be protected to ensure that the essential function can be recovered after the airplane has been exposed to lightning.

(c) For the purposes of the above, the following definitions apply:

(1) Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

(2) Essential Functions. Functions whose failure would contribute to or would cause a hazardous failure condition that would significantly impact the safety of the airplane or the

ability of the flight crew to cope with adverse operating conditions.

3. Cockpit Evacuation of Noxious/Toxic Fumes

In the absence of specific requirements for evacuating noxious/toxic fumes from the cockpit the following applies:

The ventilating air in the flight crew and passenger compartments must be free of harmful or hazardous concentrations of gases and vapors in normal operations and in the event of a reasonable probable failure or malfunctioning of the ventilation heating, pressurization, or other system and equipment. If the accumulating of hazardous quantities of noxious/toxic fumes in the cockpit area is reasonably probable, the evacuation of such fumes must be readily accomplished, starting with full cockpit pressurization and without depressurizing beyond safe limits.

Issued in Kansas City, Missouri on April 18, 1990.

Don C. Jacobsen,

Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 90-9656 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ANE-28; Amdt. 39-6486]

Airworthiness Directives; IPECO Crew Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection and modification of certain IPECO crew seats. The AD is needed to prevent failure of the seat back structure which could result in impairment of the pilot's ability to control the aircraft.

Compliance: As indicated in the body of the AD.

EFFECTIVE DATE: May 29, 1990.

Note: The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register on May 29, 1990.

ADDRESSES: The applicable service bulletins may be obtained from IPECO Inc., 15201 South Prairie Avenue, Lawndale, California 90260, or may be examined in Regional Rules Docket, room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires inspection and modification of certain IPECO crew seats was published in the *Federal Register* on August 22, 1989 (54 FR 34784).

The proposal was prompted by failures of the back structure on certain IPECO TSO-C39a crewseats due to cracking. Failure of the back structure could result in impairment of the pilot's ability to control the aircraft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Four (4) comments were received concerning the NPRM.

One commenter requested that the proposed 120-day inspection interval be extended to 130 days in order to coincide with their maintenance intervals. The FAA agrees and has changed the compliance requirement to 130 days.

Another commenter proposed that the applicability table be revised to include an additional aircraft model. The FAA agrees and has changed the applicability table to include the additional aircraft model.

A third commenter agreed with the proposed AD but requested additional repetitive inspections. The FAA disagrees, since the modifications required by the AD are sufficient to maintain the structural integrity of the crew seats without repetitive inspections.

The fourth commenter concurred with the NPRM as proposed.

Accordingly, the proposal is adopted as proposed with the above mentioned changes.

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

It is estimated that approximately 750 seats would be affected by this AD, with labor and materials costs to be covered under warranty by IPECO. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

IPECO: Applies to IPECO TSO-C39a crew seats, as follows:

Seat part No.	Serial No. effectivity	Installed in but not limited to
3A090-0021-01-2 3A090-0022-01-2 3A090-0021-02-2 3A090-0022-02-2	up to and including 11009	Boeing 737.
3A090-0019-01-1 3A090-0020-01-1	up to and including 11115	Boeing 737.

Seat part No.	Serial No. effectivity	Installed in but not limited to
3A090-0015-01-1	up to and including 11143	Boeing 757, 767.
3A090-0016-01-1		
3A090-0025-01-1	up to and including 11054	Boeing 757, 767.
3A090-0026-01-1		
3A090-0053-01-1	up to and including 11105	Boeing 747-400.
3A090-0054-01-1		
3A090-0027-01-1	up to and including 11072	Boeing 747.
3A090-0028-01-1		
3A102-0003-01-1	up to and including 11041	Boeing 747-400.
3A090-0055-01-1	up to and including 11062	Boeing 747-400.
3A090-0056-01-1		
3A103-0003-01-1	up to and including 10607	Boeing 747-400.
3A090-0017-01-1	up to and including 10100	Boeing 747.
3A090-0018-01-1		
3A090-0065-01-1	up to and including 11635	Boeing 747-400.
3A090-0066-01-1		
3A118-0003-01-1	up to and including 11580	Dehavilland DHC-7 and DHC-8.
3A118-0004-01-1		

Compliance is required as indicated, unless already accomplished.

To prevent failure of the seat back structure, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, unless already accomplished within the last 100 days and, thereafter, at intervals not to exceed 130 days from the last inspection, visually inspect the seat assembly as follows:

(1) Remove seat pan cushion and back cushion from the seat assembly. Adjust the lumbar mechanism to the fully up, fully back position. Recline seat back to full recline.

(2) By looking through the lightening holes in the pan and back structure with a flashlight, examine the base of the back structure in the area where it attaches to the reclining mechanism. This area can be identified by the bracket at the base of the back structure. Return the seat back to its upright position and also examine the base of the back structure from the rear of the seat.

(3) If any crack or deformation of the seat back structure is found, replace the seat assembly with a serviceable unit before further flight.

(4) When the repairs and modifications required by paragraph (b) have been accomplished, the repetitive visual inspections may be terminated.

(b) Within the next 15 months after the effective date of this AD, perform the repairs and modifications of the IPECO seat assemblies in accordance with the following service bulletins (SB):

IPECO SB No.	Applicable IPECO seat part No.
A001-25-29	3A090-0021-01-2 3A090-0022-01-2 3A090-0021-02-2 3A090-0022-02-2
A001-25-30	3A090-0019-01-1 3A090-0020-01-1

IPECO SB No.	Applicable IPECO seat part No.
A001-25-31	3A090-0015-01-1 3A090-0016-01-1
A001-25-32	3A090-0025-01-1 3A090-0026-01-1
A001-25-33	3A090-0053-01-1 3A090-0054-01-1
A001-25-34	3A090-0027-01-1 3A090-0028-01-1
A001-25-35	3A102-0003-01-1
A001-25-36	3A090-0055-01-1 3A090-0056-01-1
A001-25-37	3A103-0003-01-1
A001-25-38	3A090-0017-01-1 3A090-0018-01-1
A001-25-39	3A090-0065-01-1 3A090-0066-01-1
A001-25-40	3A118-0003-01-1 3A118-0004-01-1

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The repair and modification procedures shall be done in accordance with IPECO SB No. A001-25-29, Issue No. 2, pages 1 and 2 dated April 28, 1989, and pages 3 through 18 inclusive, dated August 25, 1988; IPECO SB No. A001-25-30, Issue No. 2, pages 1 and 2 dated April 28, 1989, and pages 3 through 18 inclusive, dated September 9, 1988; and IPECO SB Nos. A001-25-31 through A001-25-40 inclusive, all Issue No. 2, pages 1 and 2 dated April 28, 1989, and pages 3 through 18 inclusive, dated

September 13, 1988. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IPECO Inc., 15201 South Prairie Avenue, Lawndale, California 90260. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW., room 8301, Washington, DC 20591.

This amendment becomes effective on May 29, 1990.

Issued in Burlington, Massachusetts, on March 2, 1990.

Jack A. Sain,
Manager, Engine and Propeller Directorate,
Aircraft Certification Service.

[FR Doc. 90-9655 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-05]

Revision of Control Zone; Atlantic City, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revises the description of the Atlantic City, NJ, Control Zone. During a review of the airspace requirements for the Atlantic City International and Atlantic City Municipal/Bader Field Airports, the FAA determined that the current legal description of the Control Zone needs to be modified to eliminate confusion. The geographic position of airports upon which the Control Zone is based need to

be updated to reflect the actual location of the airports. This action modifies the description only of the Atlantic City Control Zone but does not alter the physical dimensions thereof.

EFFECTIVE DATE: 0901 U.t.c. June 28, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of this amendment to § 71.171 of part 71 of the Federal Aviation Regulations is to revise the legal description of the Atlantic City Control Zone to simplify the description thereof and update the geographic position of airports upon which the Control Zone is based. The physical dimensions of the controlled airspace will remain unaffected by this change. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6F, January 2, 1990. Since the FAA finds that this action involves a minor, technical amendment in which the public would not be interested in commenting, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

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

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Atlantic City, NJ [Revised]

Within a 5-mile radius of the center of the Atlantic City International Airport (lat. 39°27'27"N., long. 74°34'39"W.), Atlantic City, NJ; within 3 miles either side of the Atlantic City VORTAC 303° radial, extending from the 5-mile radius to 8.5 miles northwest of the airport; within a 3-mile radius of the Atlantic City Municipal/Bader Field Airport (lat. 39°21'36"N., long. 74°27'24"W.), Atlantic City, NJ; within 2 miles either side of the Atlantic City VORTAC 136° radial extending from the VORTAC to the 3-mile radius; within 1.5 miles either side of a 283° bearing from a point at lat. 39°21'43"N., long. 74°27'46"W., extending from said point to 5.5 miles west.

Issued in Jamaica, New York, on April 4, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90-9657 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141, 162, 171, and 178

[T.D. 90-34]

Technical Corrections to the Customs Regulations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain changes which are necessary. This document corrects certain printing errors that appear in the regulations, removes a cross reference to a section that no longer exists and sets forth in part 178 the OMB-assigned control numbers of two previously approved regulations which require information collections. The changes are nonsubstantive.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Harold M. Singer, Regulations and Disclosure Law Branch (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to keep its regulations current and accurate, Customs has determined that certain changes are necessary to the regulations. This document corrects four printing errors, removes a cross reference to a section that no longer exists, and sets forth in part 178, Customs Regulations (19 CFR part 178), the OMB-assigned control numbers of two previously approved Customs Regulations that involve information collections.

Discussion of Changes

1. There is a printing error that currently appears in § 141.69(b), Customs Regulations (19 CFR 141.69(b)). A block of words inadvertently is printed where it does not belong. This document sets forth the paragraph excluding the extraneous language.

2. Section 162.70(b)(1), Customs Regulations (19 CFR 162.70(b)(1)), contains a reference to § 153.46, Customs Regulations. Part 153 was removed from the Customs Regulations by Treasury Decision 80-271 in 1980. This document deletes the reference in § 162.70(b)(1) to § 153.46. Sections 162.5 and 162.7, Customs Regulations (19 CFR §§ 162.5, 162.7) are amended to correct printing errors.

3. The authority citation of Part 171, Customs Regulations (19 CFR part 171), was misprinted in Treasury Decision 89-86 which appeared in the *Federal Register* (54 FR 37600), on September 11, 1989, so that the letter "d" appears before the authority for subpart F. This document revises the authority citation by removing the extraneous letter "d" and converting the Public Law 100-690 citation for subpart F to the statutory citation, 21 U.S.C. 881 note.

4. Part 178 is being amended to indicate the OMB-assigned control number for the information collections contained in two rules recently implemented by Customs—the rule regarding statement processing and Automated Clearinghouse (Treasury Decision 89-104) and the rule regarding inconsistent Customs decisions (Treasury Decision 89-74).

The section of the regulations that sets out the procedure for statement processing and Automated Clearinghouse is § 24.25. This was published in the *Federal Register* (54 FR 50493) on December 7, 1989 and was

assigned OMB control number 1515-0167.

Section 177.12, Customs Regulations (19 CFR 177.12), the rule regarding the procedure for challenging an alleged inconsistent decision, was published in the *Federal Register* (54 FR 31511) on July 31, 1989, and was assigned control number 1515-0103.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely correct certain typographical and printing errors that appear in the regulations and otherwise conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553 (a)(2) and (b)(3)(B), notice and public procedure are unnecessary, and pursuant to 5 U.S.C. 553 (a)(2) and (d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document relates to agency management, it is not subject to E.O. 12291.

Regulatory Flexibility Act

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

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR part 141

Customs duties and inspection, Entry, Imports.

19 CFR parts 162 and 171

Administrative practice and procedure, Customs duties and inspection, Imports, Law Enforcement, Penalties, Seizures and forfeitures.

19 CFR part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

AMENDMENTS TO THE REGULATIONS

Parts 141, 162, 171, and 178 of the Customs Regulations (19 CFR parts 141, 162, 171 and 178) are amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The general authority for part 141 and specific authority for § 141.69 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

§ 141.69 also issued under 19 U.S.C. 1315;

* * * * *

2. Section 141.69(b), Customs Regulations, is revised to read as follows:

§ 141.69 Applicable rates of duty.

* * * * *

(b) *Merchandise entered for immediate transportation.* Merchandise which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation, if entered for consumption at the port designated by the consignee or his agent in such transportation entry without having been taken into custody by the district director for general order under section 490, Tariff Act of 1930, as amended (19 U.S.C. 1490), shall be subject to the rates in effect when the immediate transportation entry was accepted at the port of original importation.

* * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 and the specific authority citations for §§ 162.5 and 162.7 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624;

* * * * *

§ 162.5 also issued under 19 U.S.C. 1581, 49 U.S.C. App. 1509;

* * * * *

§ 162.7 also issued under 19 U.S.C. 482;

* * * * *

2. Section 162.5, Customs Regulations, is amended by removing the word "vehicle" and inserting in its place "vehicle".

3. Section 162.7, Customs Regulations, is amended by removing the word "truck" and inserting in its place "trunk".

4. Section 162.70(b)(1), Customs Regulations, is amended by removing the language "(see § 153.46 of this chapter)" after the word "proceedings".

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 is revised to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted. Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614; 21 U.S.C. 881 note.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR section	Description	OMB control No.
§ 24.25	Statement processing and Automated Clearinghouse.	1515-0167
§ 177.12	Inconsistent Customs decisions.	1515-0103

Carol Hallett,

Commissioner of Customs.

Approved: April 4, 1990.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-9628 Filed 4-25-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. No. 90-36]

Conforming Amendment to Customs Regulations Relating to Drawback of Countervailing and Antidumping Duties

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to conform with section 1334 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418; August 23, 1988) (the OTCA) under which countervailing and antidumping duties will no longer be treated as regular customs duties subject to drawback. Accordingly, the Customs Regulations are revised to eliminate countervailing and antidumping duties from the specific enumeration of duties subject to drawback. Pursuant to section 1337 of the OTCA, the amendment eliminates drawback of countervailing and antidumping duties on articles entered,

or withdrawn from warehouse, for consumption on or after August 23, 1988, which is the date of enactment of the OTCA.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Entry Rulings Branch, (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Drawback is a refund or remission, in whole or in part, of a Customs duty, internal revenue tax, or fee lawfully assessed or collected, which results from a particular use made of the merchandise on which the duty, tax or fee was assessed or collected.

Part 191, Customs Regulations (19 CFR part 191) sets forth the general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims.

Drawback is payable with respect to regular Customs duties. To this end, the list of duties eligible for drawback in § 191.3 (b) and (c), Customs Regulations (19 CFR 191.3 (b) and (c)), includes dumping duties assessed under title VII, Tariff Act of 1930, as amended, 19 U.S.C. 1673, and countervailing duties assessed under sections 303 and 701, Tariff Act of 1930, as amended, 19 U.S.C. 1303, 1671.

In brief, antidumping duties are imposed on foreign merchandise that is, or is likely to be, sold in the United States at less than its fair value; and countervailing duties apply to imported merchandise, where foreign governments have bestowed bounties or grants upon its exportation. In both instances, these duties are only imported if the imports are injuring a domestic industry.

The right to drawback of such duties was specifically provided for in section 779 of the Tariff Act of 1930, as amended, 19 U.S.C. 1677h (Pub. L. 98-573; October 30, 1984).

However, section 1334 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418; August 23, 1988) (the OTCA) amended 19 U.S.C. 1677h to provide that such assessments, for purposes of drawback, "shall not be treated as being regular Customs duties." In accordance with section 1337(d) of the OTCA, this amendment applies to articles entered, or withdrawn from warehouse, for consumption, on or after the date of enactment of the OTCA (August 23, 1988).

Accordingly, pursuant to this statutory provision, the Customs Regulations, part 191, are being amended to remove the reference to countervailing and

antidumping duties as being regular Customs duties subject to drawback.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as the amendment merely conforms the Customs Regulations to existing statutory law, notice and public procedure in this regard are unnecessary under 5 U.S.C. 553(b)(B) and, for the same reason, under 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document will not result in a "major rule" as defined in E.O. 12291, Customs has not prepared a regulatory impact analysis.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 191

Customs duties and inspection, exports, imports, claims, drawback.

Amendment to the Regulations

Part 191, Customs Regulations (19 CFR part 191) is amended as set forth below.

PART 191—DRAWBACK

1. The authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1313, 1624. Section 191.7 also issued under 19 U.S.C. 1514; § 191.8 also issued under 19 U.S.C. 1557; §§ 191.131(a), 191.133, 191.137, 191.139 also issued under 19 U.S.C. 1557; §§ 191.162–191.166 also issued under 19 U.S.C. 81c.

§ 191.3 [Amended]

2. Section 191.3, Customs Regulations, is amended by removing paragraphs (b)

and (c) therefrom, and by redesignating paragraph (d) as (b).

Michael H. Lane,
Acting Commissioner of Customs.

Approved: April 5, 1990.

John P. Simpson,
Acting Assistant Secretary for Enforcement.
[FR Doc. 90-9631 Filed 4-25-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Oxytetracycline and Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for use of previously approved oxytetracycline and salinomycin Type A medicated articles to make combination drug Type C medicated broiler chicken feeds. The Type C feeds are used as an aid in the reduction of mortality due to air-sac infections and for the prevention of coccidiosis.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Diane T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 140-448, providing for combining previously approved oxytetracycline and salinomycin Type A medicated articles to make combination drug Type C medicated broiler feeds. The Type C broiler feeds contain oxytetracycline 500 grams per ton and salinomycin sodium 40 to 60 grams per ton used as an aid in the reduction of mortality due to air-sacculitis (air-sac infection) caused by *E. coli* infections susceptible to oxytetracycline and for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*. The NADA is approved, and the regulations are amended in 21 CFR 558.450 in Table 1 in paragraph (d)(1), entry (v) by adding a new item and in 21

CFR 558.550 by adding new paragraph (b)(3)(iii). The basis for approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(ii) of the Generic Animal Drug and Patent Term Restoration Act of 1988 (21 U.S.C. 360b(c)(2)(F)(ii)) this approval qualifies for 3 years of marketing exclusivity beginning on April 13, 1990, because new clinical trials for safety and effectiveness were required for the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen

in the Dockets Management Branch (HFA 305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b 371).

2. Section 558.450 is amended in Table 1 in paragraph (d)(1), entry (v) by adding a new item under the heading "Combination in grams per ton" to read as follows:

§ 558.450 Oxytetracycline.

(d) * * *
(1) * * *

TABLE 1.—IN CHICKEN AND TURKEY FEED

Oxytetracycline in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(v) * * *	Salinomycin 40 to 60.....	Broiler Chickens; as an aid in the reduction of mortality due to airsacculitis (air-sac infection) caused by <i>Escherichia coli</i> sensitive to Oxytetracycline; for the prevention of coccidiosis caused by <i>Eimeria necatrix</i> , <i>E. tenella</i> , <i>E. acervulina</i> , <i>E. brunetti</i> , <i>E. mivati</i> , and <i>E. maxima</i> .	Feed for 5 days as sole ration. Do not feed to laying chickens. Withdraw 24 hours prior to slaughter. May be fatal if accidentally fed to adult turkeys or to horses. As salinomycin sodium. As mono-alkyl(C ₈ -C ₁₈) Trimethyl ammonium oxytetracycline.	000069

3. Section 558.550 is amended by adding new paragraph (b)(3)(iii) to read as follows:

§ 558.550 Salinomycin.

(b) * * *
(3) * * *
(iii) Oxytetracycline as in § 558.450.

Dated: April 13, 1990.

Gerald B. Guest,
Director, Center for Veterinary Medicine.
[FR Doc. 90-9692 Filed 4-25-90; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 801

[Docket No. 86N-0479]

RIN 0905-AC54

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing an

amendment to a final rule that standardizes tampon absorbency terms and requires manufacturers to use a specific test to determine absorbency. The amendment will allow the use of a plastic or glass chamber in the test apparatus. The final rule had specified only glass. FDA is issuing this amendment under the Federal Food, Drug, and Cosmetic Act.

EFFECTIVE DATE: The amendment is effective for packages of tampons initially introduced or initially delivered for introduction into commerce after April 26, 1990.

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

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 26, 1989 (54 FR 43766), FDA issued a final rule to amend the agency's regulations governing user labeling for menstrual tampons (§ 801.430(f)(2) (21 CFR

801.430(f)(2))) to standardize absorbency terms used on tampon package labels and to require uniform absorbency testing of tampons. The purpose of the final rule is to enable consumers to choose the least absorbent tampon needed to control menstrual flow and thus lower their risk of contracting toxic shock syndrome (TSS). The risk of TSS, a rare but sometimes fatal disease, increases with the use of tampons of higher absorbency.

Prior to the issuance of the final rule, the agency had published a proposed rule in the Federal Register of September 23, 1988 (53 FR 37250) (corrected November 3, 1988 (53 FR 44551) and January 17, 1989 (54 FR 1844)) and a repropoed rule in the Federal Register of June 12, 1989 (54 FR 25076) (corrected June 28, 1989 (54 FR 27188)). More than 270 comments were received on the proposed rule. A summary of these comments and the agency's response to them were set out in the preamble to the repropoed rule. Because of an oversight, FDA did not respond to a comment on the proposed rule about the syngyna test method specified in § 801.430(f)(2) to be used to measure tampon absorbency. The comment was submitted by a firm that

tests sanitary protection products. The comment recommended that FDA permit the syngyna test chamber to be fabricated of glass or "suitable plastic" instead of specifying only glass. FDA agrees with the comment that either a glass or plastic chamber should be permitted; however, the agency believes that the only kind of plastic material that is acceptable as a substitute for glass is hard transparent plastic.

Accordingly, the agency is revising § 801.430(f)(2) to permit the use of a glass chamber or a chamber made from hard transparent plastic. Also, Figure 1—Syngyna Test Chamber, referred to in § 801.430(f)(2), is being revised to remove the word "glass."

Under section 553 (b) and (d) of the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)) and FDA's administrative practices and procedures regulations (21 CFR 10.40(e)), FDA finds that notice and public procedure prior to promulgating this amendment to the final rule are unnecessary for the following reasons. First, the amendment does not impose an additional burden on persons testing the absorbency of tampons; in fact, it relieves a burden because the amendment allows flexibility in the way the test chamber is fabricated. Second, the agency has solicited comments on absorbency testing and labeling in a proposed rule and in a repropounded rule, resulting in over 300 comments received. If FDA had not inadvertently overlooked the comment to which the agency is responding by this amendment, the agency would have responded to it by revising the proposed rule without asking for further public comment. Third, FDA believes that the amendment is only a minor change to the test method and does not substantively

change the final rule. Fourth, promulgation of the amendment without notice and comment will shorten the time in which those persons testing the absorbency of tampons who wish to substitute plastic for a glass test chamber will be able to do so in order to comply with the final rule. For all these reasons, FDA has good cause to promulgate the amendment without prior notice and an opportunity for comment. FDA is making the amendment effective on the date of publication in the **Federal Register** for the same reasons and because the amendment relieves a restriction. (See 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4)(i).)

Although the agency is now promulgating the amendment, FDA is providing, in accordance with 21 CFR 10.40(e)(1), an opportunity to comment on the amendment after it is published. The agency will use any comments received to determine whether the portion of the final rule pertaining to the test method should be further modified or if the amendment should be revoked. If the comments justify any further changes in the final rule, the agency will publish these changes in the **Federal Register**.

Interested persons may submit written comments to the Dockets Management Branch (address above) at any time. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 801

Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 801 is amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360i, 360j, 371, 374).

2. Section 801.430 is amended in paragraph (f)(2) by revising the first sentence and Figure 1 to read as follows:

§ 801.430 User labeling for menstrual tampons.

(f) * * *

(2) In the absorbency test, an unlubricated condom, with tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the procedure in the American Society for Testing and Materials (ASTM), D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)"¹ for determining tensile strength, which is incorporated by reference in accordance with 5 U.S.C. 552(a), is attached to the large end of a glass chamber (or a chamber made from hard transparent plastic) with a rubber band (see Figure 1) and pushed through the small end of the chamber using a smooth, finished rod. * * *

BILLING CODE 4160-01-M

¹ Copies of the standard are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

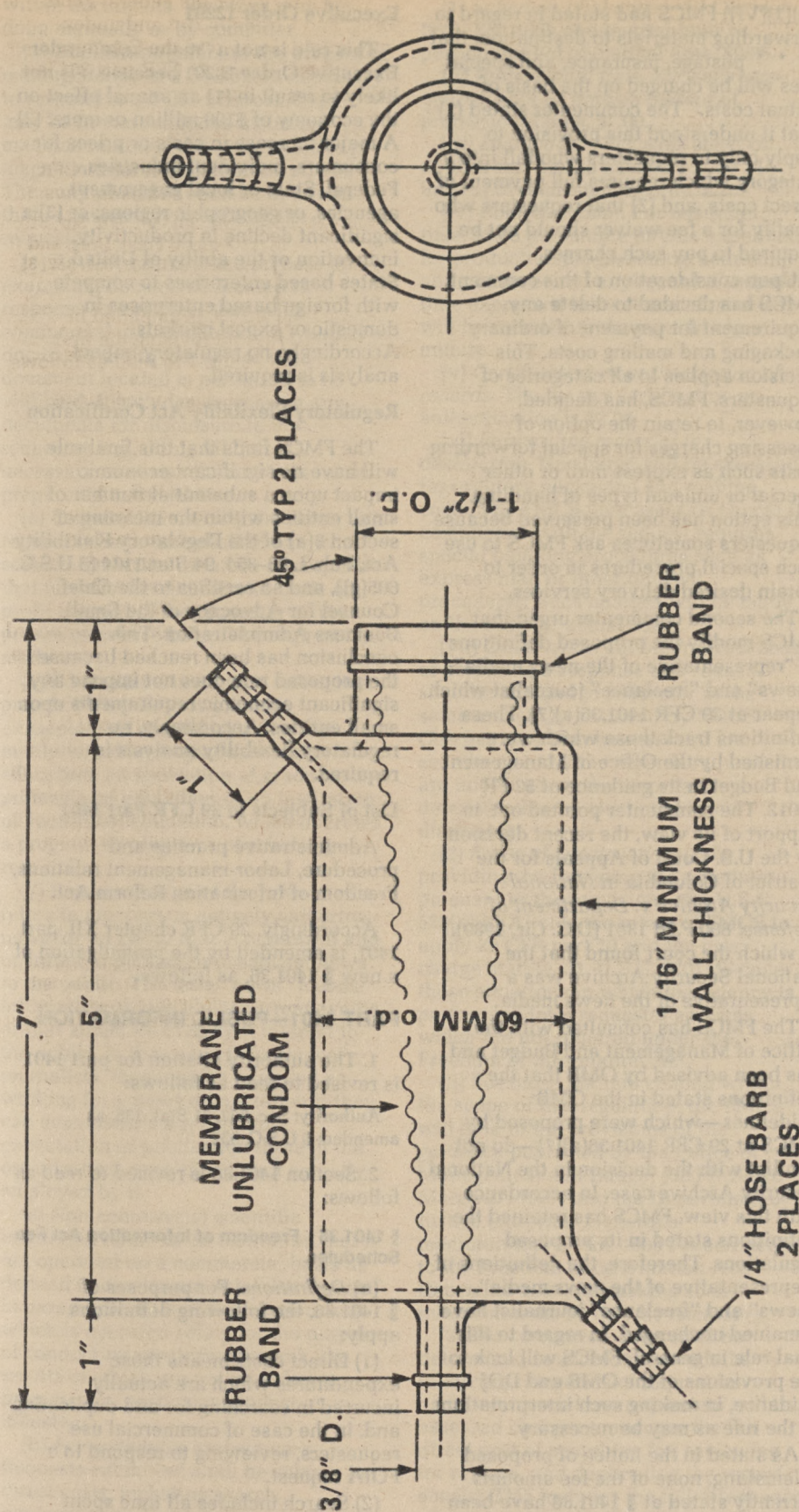


FIGURE 1 — SYNGYNA TEST CHAMBER

BILLING CODE 4160-01-C

* * * * *

Dated: April 18, 1990.
 Ronald G. Chesemore,
Associate Commissioner for Regulatory Affairs.
 [FR Doc. 90-9691 Filed 4-25-90; 8:45 am]
 BILLING CODE 4160-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

Freedom of Information Reform Act; Revision of Fee Schedule and Fee Waiver Policy

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Freedom of Information Act provisions at 29 CFR 1401.36. This amendment is made pursuant to the Freedom of Information Reform Act (Pub. L. 99-570, section 1803) which requires that agencies establish certain new criteria for the determination of fees, and when fees should be waived or reduced.

EFFECTIVE DATE: This rule will be effective on June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Telephone: (202) 653-5305.

SUPPLEMENTARY INFORMATION: On October 27, 1986 the President signed into law the Freedom of Information Reform Act of 1986 (Pub. L. 99-570, section 1803). This Act created a new structure for the assessment of FOIA fees and also established a revised statutory standard for the waiver or reduction of fees. The Office of Management and Budget (OMB) has promulgated guidelines (52 FR 10012, March 27, 1987) which guide agencies in the development of implementing regulations pertaining to the assessment of fees, and the Department of Justice (DOJ) has issued guidance (Attorney General's memorandum on the 1986 Amendments to the Freedom of Information Act, December 1987) in regard to implementing regulations for fee reduction and fee waivers.

Pursuant to the Freedom of Information Reform Act of 1986, and the guidance provided by OMB and DOJ, a notice of proposed rulemaking was published by this agency on June 20, 1989 (54 FR 25879). Two comments were received, as follows.

One commenter noted that in the proposed regulation (at 29 CFR 1401.36

(b)(1)(VI)) FMCS had stated in regard to forwarding materials to destination, that " * * * postage, insurance, and special fees will be charged on the basis of actual costs." The commenter stated (1) that it understood this provision to apply only to requesters who fall into a category which requires full payment of direct costs, and (2) that requesters who qualify for a fee waiver should not be required to pay such charges.

Upon consideration of this comment, FMCS has decided to delete any requirement for payment of ordinary packaging and mailing costs. This decision applies to all categories of requesters. FMCS, has decided, however, to retain the option of assessing charges for special forwarding costs such as express mail or other special or unusual types of handling. This option has been preserved because requesters sometimes ask FMCS to use such special procedures in order to obtain desired delivery services.

The second commenter urged that FMCS modify the proposed definitions of "representative of the news media", "news" and "freelance" journalist which appear at 29 CFR 1401.36(a)(7). These definitions track those which were furnished by the Office of Management and Budget in its guidance at 52 FR 10012. The commenter pointed out, in support of its view, the recent decision by the U.S. Court of Appeals for the District of Columbia in *National Security Archive v. Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), in which the court found that the National Security Archive was a representative of the news media.

The FMCS has consulted with the Office of Management and Budget and has been advised by OMB that the definitions stated in the OMB guidelines—which were proposed by FMCS at 29 CFR 1401.36(a)(7)—do not conflict with the decision in the National Security Archive case. In accordance with this view, FMCS has retained the definitions stated in its proposed regulations. Therefore, the definitions of "representative of the news media", "news" and "freelance" journalist have remained unchanged. In regard to this final rule in general, FMCS will look to the provisions of the OMB and DOJ guidance, in making such interpretations of the rule as may be necessary.

As stated in the notice of proposed rulemaking, none of the fee amounts currently stated at § 1401.36 have been changed, rather only the criteria for assessing fees, or reducing or waiving them, have been revised.

Executive Order 12291

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

Regulatory Flexibility Act Certification

The FMCS finds that this final rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat.1164 (5 U.S.C. 605(g)), and so certifies to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not impose any significant economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR Part 1401

Administrative practice and procedure, Labor-management relations, Freedom of Information Reform Act.

Accordingly, 29 CFR chapter XII, part 1401, is amended by the promulgation of a new § 1401.36, as follows:

PART 1401—PUBLIC INFORMATION

1. The authority citation for part 1401 is revised to read as follows:

Authority: Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Section 1401.36 is revised to read as follows:

§ 1401.36 Freedom of Information Act Fee Schedules.

(a) *Definitions.* For purposes of § 1401.36, the following definitions apply:

(1) Direct costs means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing to respond to a FOIA request.

(2) Search includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material

within documents. Searches may be done manually or by computer.

(3) Duplication refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine readable documentation (e.g. magnetic tape or disk) among others. The copy provided shall be in a form that is reasonably usable by the requester.

(4) Review refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g., doing all that is necessary to excise them or otherwise prepare them for release.

(5) Commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interest of the requester or the person on whose behalf the request is made.

(6) Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate or professional education or an institution of vocational education, which operates a program or programs of scholarly research.

(7) Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable expectation of publication through the organization, even though not actually employed by it.

(8) Non-commercial scientific institution refers to an institution that is not operated on a commercial basis as defined under "commercial use request" in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(b) *Fee schedules and waivers.* Requests submitted shall be subject to direct costs, including search, duplication and review, in accordance with the following schedules, procedures and conditions.

(1) *Schedule of charges*—(i) Clerical time. For each one-quarter hour or portion thereof of clerical time, \$2.25.

(ii) *Professional time.* For each one-quarter hour or portion thereof of professional time, \$7.00.

(iii) *Duplication.* For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records, \$.20.

(iv) *Computer time.* For computer time, \$3.00 per minute of time expended for production programming, searching and production of any record. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

(v) *Certification or authorization of records.* The fee per certification or authentication is \$2.00.

(vi) *Forwarding material to destination.* No charge will be assessed for ordinary packaging and mailing costs. The FMCS may assess a charge if compliance with the request requires special handling procedures such as express mail or other unusual procedures. Such charges will be made on the basis of actual costs.

(vii) *Other costs.* All other direct costs of preparing a response to a request shall be charged to requester in the same amount as incurred by FMCS. Charges may also be assessed for searches even if the records requested are not found, or the records are determined to be exempted from disclosure.

(2) *Rules of construction.* (i) In providing the foregoing the schedules pursuant to the provisions of 5 U.S.C. 552(a)(4)(A), it is the intent of FMCS to apply 29 CFR part 70 and the user charge statute, 31, U.S.C. 9701, to cover those situations in which the Agency is performing for a requester services which are not required under the Freedom of Information Act.

(ii) For those matters coming within the scope of this regulation, the FMCS will look to the provisions of the guidance published by the Office of Management and Budget (52 FR 10012, March 27, 1987) and the Department of Justice (Attorney General's memorandum on the 1986 Amendments to the Freedom of Information Act, December 1987) for making such interpretations as may be necessary.

(3) *Fee categories.* Fees shall be determined in accordance with the following categories of requesters.

(i) Commercial use requesters will be assessed charges to recover the full direct cost of searching for, reviewing for release, and duplicating the records sought. This includes the full direct costs of computer production programming, searching and production of records. Commercial use requesters are not

entitled to 2 hours of free search time nor 100 free pages of reproduction of documents, as described below.

(ii) Educational and non-commercial scientific institution requesters will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution pursuant to the criteria in paragraphs (a)(6) and (a)(8) of this section, and that the records are not sought for commercial use, but are sought in furtherance of scholarly or scientific research.

(iii) Requesters who are representatives of the news media will be assessed charges for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(7) of this section, and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use.

(iv) All other requesters will be assessed charges to recover the full reasonable direct costs of searching for and reproducing records that are responsive to the request, including costs of computer production programming, searching and production, except that the first 100 pages of reproduction, and the first 2 hours of search time shall be furnished without charge.

(v) In no event shall fees be charged when the total charges are less than \$50.00, which is the Agency cost of collecting and processing the fee itself.

(4) *Waiver or reduction of charge.* Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(c) *Fee payments.* (1) Payments shall be made by check or money order payable to "Federal Mediation and Conciliation Service" and shall be sent to: Director, Financial Management Staff, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427.

(2) If a requester fails to pay chargeable fees that were incurred as a result of this Agency's processing of the information request, the Agency beginning on the 31st day following the

date on which the notification of charges was sent, may assess interest charges against the requester in the manner prescribed in 31 U.S.C. 3717.

(3) The Agency may use the provisions of the Debt Collection Act of 1982, (Pub. L. 97-365, 29 CFR part 1450) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

(d) *Advance payments.* FMCS may require a requester to make an advance payment of anticipated fees under the following circumstances:

(1) If the anticipated charges are likely to exceed \$250, FMCS may notify the requester of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payments.

(2) If a requester has previously failed to pay fees that have been charged in processing a request, within 30 days of the date when the notification of fees was sent, the requester may be required to:

(i) Pay the entire amount of fees that are owed, plus any applicable interest as provided for in paragraph (c)(2) of this section, and

(ii) To make an advance payment of the full amount of the estimated fee before the Agency will process the new pending request.

Dated: April 18, 1990.

Bernard E. DeLury,
Director.

[FR Doc. 90-9653 Filed 4-25-90; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve a proposed amendment to the New Mexico permanent regulatory program (New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to water control measures for coal processing waste banks, disposal of

noncoal wastes, backfilling and grading, inspections, the definition of "blaster," and the training, examination, and certification of blasters. The amendment revises the New Mexico program to be consistent with the corresponding Federal standards.

DATES: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., Suite 310, Albuquerque, New Mexico 87102, Telephone (505) 827-5970.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, *Federal Register* (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.15 and 931.30.

II. Proposed Amendment

On March 9 and 17, 1989, OSM published notices in the *Federal Register* (54 FR 9980 and 54 FR 11183; Administrative Record Nos. NM-480 and NM-484) announcing the Director of OSM's approval of the June 17, 1987 (as revised and clarified on February 18, 1988, and August 10, 1988; Administrative Record Nos. NM-356, NM-393, and NM-438), and April 18, 1988 (as revised and clarified on October 20, 1988; Administrative Record Nos. NM-405 and NM-452), State-proposed amendments to the rules of the New Mexico program. The Director approved the amendments on the condition that New Mexico adopt the rules in forms identical to those submitted to and reviewed by OSM and the public.

By letters dated March 29 and April 26, 1989 (Administrative Record Nos. NM-489 and NM-490), New Mexico submitted to OSM copies of the rules that it had promulgated (effective April 28, 1989) subsequent to the Director's approvals. Upon comparing the OSM-approved rules and the New Mexico-promulgated rules, OSM identified differences in the two sets of rules.

On June 12, 1989, OSM published a notice in the *Federal Register* (54 FR 24912) soliciting public review of New

Mexico's promulgated rules to determine whether they were no less effective than the Federal regulations and no less stringent than SMCRA. The public comment period ended July 12, 1989.

After reviewing the promulgated rules and all comments received during the comment period, OSM identified the following provisions of the promulgated Coal Surface Mining Commission (CSMC) rules that appeared to be less effective than the Federal regulations and less stringent than SMCRA, or were in need of correction of typographical errors: water control measures for coal processing waste banks, CSMC Rule 80-1-20-83(b); disposal of noncoal wastes, CSMC Rule 80-1-20-89(d)(2); covering of coal and acid- and toxic-forming materials by backfilling and grading operations, CSMC Rule 80-1-20-103(a)(1); inspections, CSMC Rule 80-1-29-11(a); definition of "blaster," CSMC Rule 80-1-33-11; and training, examination, and certification of blasters, CSMC Rules 80-1-33-13 and 80-1-33-15. By letter dated August 7, 1989, OSM notified New Mexico of its concerns (Administrative Record No. NM-529). By letter dated October 23, 1989, New Mexico responded to these concerns by submitting proposed revisions to the promulgated rules (Administrative Record No. NM-548).

OSM published a notice in the *Federal Register* on November 17, 1989 (54 FR 47777), reopening the comment period on the revised rules. OSM did so to provide the public the opportunity to reconsider the adequacy of the proposed rules. The reopened comment period closed December 4, 1989.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, as discussed below, that the proposed amendment is no less stringent than SMCRA and no less effective than the Federal regulations.

1. CSMC Rule 80-1-20-83(b), *Water Control Measures for Coal Processing Waste Banks*

On March 17, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-20-83(b), which required control of surface water drainage on and from above coal processing waste banks in accordance with CSMC Rule 80-1-20-92(b). In making this decision, the Director found that the requirements of CSMC Rule 80-1-20-92(b), which sets out surface drainage structure design criteria for coal processing waste banks, are no less

effective than the requirements of the corresponding Federal regulations at 30 CFR 816.84(d) and 817.84(d). (See the finding for CSMC Rule 80-1-20-83(b) in the Director's March 17, 1989, final rule **Federal Register** notice (54 FR 11183 at 11184).)

When New Mexico promulgated CSMC Rule 80-1-20-83(b), New Mexico referenced in this rule CSMC Rule 80-1-20-72(d), which applies to surface drainage structure design criteria for valley fill spoil disposal areas, instead of CSMC Rule 80-1-20-92(b). OSM identified this as an issue in its August 7, 1989, letter to New Mexico.

In its October 23, 1989, amendment, New Mexico revised CSMC Rule 80-1-20-83(b) to correctly reference CSMC Rule 80-1-20-92(b). New Mexico's revised rule conforms to that which the Director approved on March 17, 1989. The Director finds that New Mexico's revised rule at CSMC Rule 80-1-20-83(b) is no less effective than the corresponding Federal regulations at 30 CFR 816.84(d) and 817.84(d), and he is approving it.

2. CSMC Rule 80-1-20-89(d)(2), Disposal of Noncoal Wastes

On March 9, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-20-89 that addresses the disposal of noncoal wastes (54 FR 9980). However, when New Mexico promulgated CSMC Rule 80-1-20-89(d)(2), it omitted the word "water" in the State agency name "New Mexico Water Quality Control Commission," which was cited by name in the proposed rule. In its August 7, 1989, letter, OSM notified New Mexico that proposed CSMC Rule 80-1-20-89(d)(2) was no less effective than the Federal regulations at 30 CFR 816.89(b) and 817.89(b), but it contained this typographical error. New Mexico corrected this typographical error in its October 23, 1989, revised amendment. In its November 17, 1989, **Federal Register** notice reopening the comment period on the revised amendment, OSM incorrectly indicated that this rule appeared to be less effective than the Federal regulations and less stringent than SMCRA (54 FR 47777 at 47778). The Director now corrects this misstatement and finds that this typographical error does not render New Mexico's revised rule at CSMC Rule 80-1-20-89(d)(2) less effective than the Federal regulations at 30 CFR 816.89(b) and 817.89(b). Therefore, he is approving the revised rule at CSMC Rule 80-1-20-89(d)(2).

3. CSMC Rule 80-1-20-103(a)(1), Covering of Coal and Acid- and Toxic-Forming Materials by Backfilling and Grading Operations

On March 9, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-20-103(a), which addressed the covering of coal and toxic-forming materials by backfilling and grading operations. (See finding No. 9 in the Director's March 9, 1989, final rule **Federal Register** notice (54 FR 9980 at 9982).)

When New Mexico promulgated CSMC Rule 80-1-20-103, it required at paragraph (a)(1) the burying and treatment of potentially hazardous material produced during "surface coal mining reclamation operations." In its August 7, 1989, letter, OSM notified New Mexico that New Mexico had apparently omitted the word "and" between the words "mining" and "reclamation" in the phrase "surface coal mining reclamation operations." OSM noted that, whereas this appeared to be a typographical omission, nevertheless it was a substantive one because the phrase "surface coal mining and reclamation operations" has a specific, defined meaning in the New Mexico program and in the Federal regulations, and "surface coal mining reclamation operations" does not. On this basis, OSM found New Mexico's use of the phrase "surface coal mining reclamation operations" in the proposed rule at CSMC Rule 80-1-20-103(a)(1) to be inconsistent with use of the phrase "surface coal mining and reclamation operations" elsewhere in New Mexico's program and the Federal regulations at 30 CFR 816.102(f) and 817.102(f).

In its October 23, 1989, amendment, New Mexico revised CSMC Rule 80-1-20-103(a)(1) to include the omitted word. The Director finds that New Mexico's revised rule at CSMC Rule 80-1-20-103(a)(1) is no less effective than the corresponding Federal regulations at 30 CFR 816.102(f) and 817.102(f), and he is approving it.

4. CSMC Rule 80-1-29-11(a), Inspections

On March 9, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-29-11(a), which addressed partial, complete, and aerial inspections of surface coal mining and reclamation operations. (See finding No. 10 of the Director's March 9, 1989, final rule **Federal Register** notice (54 FR 9980 at 9982).)

When New Mexico promulgated CSMC Rule 80-1-29-11(a), it omitted the words "active" and "or aerial" from the rule. In its August 7, 1989, letter, OSM

notified New Mexico that the omission of the word "active" in the promulgated rule resulted in an inconsistency between New Mexico's rules at CSMC Rules 80-1-29-11 (a) and (b), because paragraph (a) required that partial inspections at inactive operations be conducted once a month, whereas paragraph (b) required that such inspections only be conducted periodically. In addition, OSM notified New Mexico that the omission of the words "or aerial" from the promulgated rule at CSMC Rule 80-1-29-11(a) neither rendered this rule less effective than the corresponding Federal regulations at 30 CFR 840.11 nor precluded New Mexico from using aerial inspections, but it did preclude New Mexico from counting aerial inspections as partial inspections.

In its October 23, 1989, amendment, New Mexico revised CSMC Rule 80-1-29-11(a) to reinsert the omitted words. The Director finds that New Mexico's revised rule at CSMC Rule 80-1-29-11(a) is no less effective than the Federal regulations at 30 CFR 840.11 (a), (b), and (d) (1) and (2), and he is approving it.

5. CSMC Rule 80-1-33-11, Definition of Blaster

On March 9, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-33-11, which included a definition of "blaster" (54 FR 9980). When New Mexico promulgated a definition of "blaster" at CSMC Rule 80-1-33-11, it included the statement that a "[b]laster means a person directly responsible for the design of explosive shots in surface coal mining operations who is certified under this part" (part 33).

In its August 7, 1989, letter, OSM notified New Mexico that CSMC Rule 80-1-33-11 was less effective than the corresponding definition of "blaster" in the Federal regulations at 30 CFR 850.5. OSM reached this conclusion on the basis that the Federal regulation defines a "blaster" as a person directly responsible for the "use of explosives," whereas New Mexico's proposed definition restricts the responsibility of certified blasters to the "design of explosive shots."

In its October 23, 1989, amendment, New Mexico revised CSMC Rule 80-1-33-11 to require that certified blasters be responsible for "the use of explosives" rather than the "design of explosive shots." The Director finds that New Mexico's revised rule at CSMC Rule 80-1-33-11 is no less effective than the corresponding Federal regulations at 30 CFR 850.5, and he is approving it.

6. CSMC Rules 80-1-33-14 and 80-1-33-15, Training, Examination, and Certification of Blasters

(a) *CSMC Rule 80-1-33-14.* On March 9, 1989, the Director approved New Mexico's proposed rule at CSMC 80-1-33-14, which required all candidates for State blaster certification to (1) be certified under another OSM-approved State or Federal blaster certification program, and (2) have at least 1 year of practical field experience. (See finding No. 1(b) in the Director's March 9, 1989, final rule *Federal Register* notice (54 FR 9980 at 9980).) When New Mexico promulgated CSMC Rule 80-1-33, it omitted the section name and number for section 33-14. In its August 7, 1989, letter, OSM notified New Mexico of this typographical error. New Mexico corrected this typographical error in its October 23, 1989, revised amendment. The Director finds that New Mexico's revised rule at CSMC Rule 80-1-33-14 is no less effective than the Federal regulations at 30 CFR 850.14 and 850.15, and he is approving it.

(b) *CSMC Rule 80-1-33-15.* On March 9, 1989, the Director approved New Mexico's proposed rule at CSMC Rule 80-1-33-15(e), which required certified blasters to exhibit their certificates to authorized representatives of the Director of the New Mexico Mining and Minerals Division (MMD). (See finding No. 1(d) in the Director's March 9, 1989, final rule *Federal Register* notice (54 FR 9980 at 9981).) The corresponding Federal regulation at 30 CFR 850.15(e)(1) requires certified blasters to exhibit their certificates upon request to authorized representatives of, not only a State regulatory authority, but also OSM. The Director approved New Mexico's provision at CSMC Rule 80-1-33-15(e) without the specific requirement for a certified blaster to exhibit his certificate to an OSM authorized representative, because New Mexico reasoned, and the Director agreed, that OSM has access to such certificates under the authority of 30 CFR 842.13(a)(2). This Federal regulation authorizes OSM's access to any records of a surface coal mining or exploration operation.

When New Mexico promulgated CSMC Rule 80-1-33-15(e)(1), it required certified blasters to exhibit their certificates to authorized representatives of both New Mexico MMD and OSM.

In its October 23, 1989, amendment, New Mexico retained this revised language from the promulgated rule. The revised rule at CSMC Rule 80-1-33-15(e)(1) is substantively identical to the corresponding Federal regulation at 30

CFR 850.15(e)(1). Therefore, the Director finds that CSMC Rule 80-1-33-15(e)(1) is no less effective than the Federal regulation at 30 CFR 850.15(e)(1), and he is approving it.

7. 30 CFR 931.12 (b) and (n), New Mexico Regulations Affirmatively Disapproved in Accordance With Court Order

In the Federal Register notice announcing the Department's approval of New Mexico's original program, the Secretary, at 30 CFR 931.12, affirmatively disapproved several provisions of New Mexico's program that incorporated suspended or remanded Federal regulations (45 FR 86459, 86461; December 31, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" (*In re: Permanent Surface Mining Regulation Litigation*, Civil Action 79-1144, May 16, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 16, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 16, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

As discussed below, the Director finds, consistent with the court decisions, that the affirmative disapprovals at 30 CFR 931.12 (b) and (n) are no longer necessary. The Director is taking this opportunity to remove them.

By letter dated July 16, 1984 (Administrative Record No. NM-287), New Mexico submitted to OSM a proposed amendment deleting CSMC Rules 80-1-20-152 through 176, which previously addressed various standards for class I, II, and III roads, and revising CSMC Rule 80-1-1-5, the definition of "road;" CSMC Rule 80-1-20-150, addressing a road classification system, general performance standards for roads, and design, construction, location, maintenance, and reclamation

requirements for roads; and CSMC Rule 80-1-20-151, addressing additional standards and criteria for primary roads, including certification by a registered professional engineer. The Director approved these proposed rules in the January 4, 1985, *Federal Register* (50 FR 456) and codified his approval of these rules at 30 CFR 931.15(d). At that time, the Director inadvertently did not remove the associated affirmative disapproval for CSMC Rule 80-1-1-5 at 30 CFR 931.12(b) and the associated affirmative disapproval for CSMC Rules 80-1-20-150 through 176 at 30 CFR 931.12(n).

The Director's decision to remove the affirmative disapprovals at 931.12 (b) and (n) at this time is consistent with the court's August 15, 1980, ruling in that (1) New Mexico's approved rules at CSMC Rules 80-1-1-5, 80-1-20-150, and 80-1-20-151 and its deletion of CSMC Rules 80-1-20-152 through 176 are based on the Federal rules as revised in response to the 1980 remands, not on the remanded 1979 language; (2) since the proposed regulations were drafted well after the 1980 Federal court decisions resulting in the affirmative disapprovals, New Mexico had adequate opportunity to revise its rules to reflect the judicial remands; and (3) in submitting the amendment, the head of the New Mexico regulatory authority specifically requested approval of the proposed rules.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from various Federal agencies with an actual or potential interest in the New Mexico program. The National Park Service responded that, on a technical assistance basis, the proposed amendment adequately addressed its concerns (Administrative Record No. NM-556). The U.S. Fish and Wildlife Service, Bureau of Land Management, and Forest Service responded that they had no comments on the proposed amendment (Administrative Record Nos. NM-555, 552, and 551).

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

None of the changes that New Mexico proposed to its rules pertain to air or water quality standards, and therefore EPA's concurrence on them was not necessary. Nevertheless, EPA granted its concurrence on them under the authority of the Clean Water Act (Administrative Record No. NM-553).

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment as submitted by New Mexico on March 29 and April 26, 1989, and as revised by it on October 23, 1989. The Director's approval of the amendment is contingent upon New Mexico's promulgation of the proposed revisions in the identical form as submitted for OSM's review. However, the Director reserves the right to require further revisions to those approved rules in the future as a result of Federal regulatory revisions, court decisions, and OSM's continuing oversight of the New Mexico program.

The Director is, as explained in findings Nos. 1, 2, 3, 4, 5, and 6, approving New Mexico's proposed revisions for water control measures for coal processing waste banks at CSMC Rule 80-1-20-83(b), disposal of noncoal wastes at CSMC Rule 80-1-20-89(d)(2), covering of coal and acid- and toxic-forming materials by backfilling and grading operations at CSMC Rule 80-1-20-103(a)(1), inspections at CSMC Rule 80-1-29-11(a), definition of "blaster" at CSMC Rule 80-1-33-11, and training, examination, and certification of blasters at CSMC Rules 80-1-33-14 and 80-1-33-15(e)(1).

The Director is, as explained in finding No. 7, removing the affirmative disapprovals at 30 CFR 931.12 (b) and (n).

To implement this decision, the Director is amending the Federal regulations at 30 CFR part 931 that codify all decisions concerning the New Mexico program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay.

Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

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

Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal regulations will be met by the State.

Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 931

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

Dated: April 18, 1990.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

Part 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

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

§ 931.10 [Amended]

2. Section 931.10 is amended by removing paragraph (c) and revising paragraphs (a) and (b) to read as follows:

(a) Energy and Minerals Department, Mining and Minerals Division, 2040 South Pacheco St., Santa Fe, NM 87505.

(b) Office of Surface Mining Reclamation and Enforcement, 625 Silver Ave., SW., Suite 310, Albuquerque, NM 87102.

§ 931.12 [Amended]

3. Section 931.12 is amended by removing and reserving paragraphs (b) and (n).

4. Section 931.15 is amended by adding a new paragraph (k) to read as follows:

931.15 Approval of amendments to State regulatory program.

(k) The following amendment, as submitted on March 29 and April 26, 1989, and as revised on October 23, 1989, is approved effective April 26, 1990. Revisions to the New Mexico Surface Coal Mining Commission (CSMC) Rules pertaining to water control measures for coal processing waste banks at CSMC Rule 80-1-20-83(b), disposal of noncoal wastes at CSMC Rule 80-1-20-89(d)(2), covering of coal and acid- and toxic-forming materials by backfilling and grading operations at CSMC Rule 80-1-20-103(a)(1), inspections at CSMC Rule 80-1-29-11(a), definition of "blaster" at CSMC Rule 80-1-33-11, and training, examination, and certification of blasters at CSMC Rules 80-1-33-14 and 80-1-33-15(e)(1).

[FR Doc. 90-9694 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-90-07]

Special Local Regulations; International Bay City River Roar— Saginaw River, Bay City, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Bay City River Roar to be held on the Saginaw River. This event will be held on 22, 23 and 24 June 1990. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 22 June 1990 and terminate 5:30 p.m. (EDST), 24 June 1990.

FOR FURTHER INFORMATION CONTACT:

Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, Search and Rescue Branch, Ninth Coast Guard District, 1240 East 9th

Street, Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 30 March 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Corey A. Bennett, Marine Science Technician First Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The International Bay City River Roar will be conducted on the Saginaw River on 22, 23 and 24 June 1990. This event will have an estimated 70 Hydroplanes which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Saginaw River, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35-0907 to read as follows:

§ 100.35-0907 International Bay City River Roar—Saginaw River, Bay City, MI

(a) *Regulated Area:* That portion of the Saginaw River from Liberty Bridge on the north to Veterans Memorial Bridge on the South.

(b) *Special Local Regulations:* (1) The above area will be closed to navigation or anchorage, except when expressly authorized by the Coast Guard Patrol Commander from 9:30 a.m. until 4 p.m. (EDST) on 22 June 1990, from 9:30 a.m. to 4:30 p.m. (EDST) on 23 June 1990, and from 8:30 a.m. to 5:30 p.m. (EDST) on 24 June 1990.

(2) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Any vessel desiring to transit the regulated area, during the effective time period (22, 23, and 24 June 1990), may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other vessel. The rules contained in the above sentence shall not apply to participants in the event or patrol vessels in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(7) *Effective Dates:* These regulations will become effective on 22 June 1990 and terminate 5:30 p.m. (EDST), 24 June 1990.

Dated: April 13, 1990.

R. A. Appelbaum,
RADM, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 90-9642 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD7-90-27]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the State of South Carolina, the Coast Guard is temporarily changing the regulations governing the operation of the Wappoo Creek Drawbridge, mile 470, at Charleston, by permitting the draw to be closed to all non-exempt vessels an additional one-half hour at the beginning of the morning regulated period. This change is being made because of complaints about highway traffic delays caused by the increased bridge openings as a result of the seasonal migration of vessels on the Atlantic Intracoastal Waterway. This action will accommodate the needs of the recent increase in vehicular commuter traffic originating from James Island and will continue to provide for the reasonable needs of navigation.

EFFECTIVE DATE: These temporary regulations became effective on April 2, 1990, and will terminate on May 31, 1990.

ADDRESSES: Comments regarding this temporary change should be mailed to Commander (oan), Seventh Coast Guard District, Brickell Plaza Federal Building, 909 SE 1st Avenue, Miami, Florida 33131-3050. Any comments received will be available for inspection and copying in the office of the Bridge Administrator located in Room 406, Brickell Plaza Federal Building, 909 S.E. 1st Avenue, Miami, Florida. Documents and comments concerning this regulation

may be inspected Monday through Friday between the hours of 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Interested parties submitting written views, comments, data, or arguments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended change to, the temporary regulation.

Drafting Information

The drafters of this notice are Mr. Gary Pruitt, Bridge Administration Specialist, project officer, and Lieutenant Commander D. G. Dickman, project attorney.

Discussion of Temporary Regulations

This temporary regulation changes only the morning regulated period on weekdays. The draw presently opens on signal except that the draw need not open from 6:30 a.m. to 9 a.m. Monday through Friday except federal holidays. This temporary change, which increases the existing authorized morning closed period by one-half hour, is intended to decrease the number of openings caused by recreational vessels just prior to the beginning of the morning rush hour traffic. Elimination of the bridge openings from 6 a.m. to 6:30 a.m. on weekdays should improve the morning traffic flow with minimum impact on normal navigation. Because this is a temporary regulation, it will not appear in the Code of Federal Regulations.

Federalism

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

Economic Assessment and Certification

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

The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because it exempts public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property. Since the economic impact is expected to be minimal, the Coast Guard certifies that

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

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard has amended part 117 of title 33 Code of Federal Regulations as follows:

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. For the period between April 2, 1990, and May 31, 1990, paragraph (d) of § 117.911 is revised to read as follows:

Note: This is a temporary rule and will not appear in the Code of Federal Regulations.

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(d) SR 171/700 drawbridge across Wappoo Creek, mile 470.8 at Charleston. The draw shall open on signal, except that the draw need not open from 6 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m. Monday through Friday, except federal holidays. From April 1 to November 30 from 9 a.m. to 4 p.m. Monday through Friday, except Federal holidays, the bridge need not open except on the hour and on the half-hour. From April 1 to November 30, from 9 a.m. to 7 p.m., on Saturdays, Sundays and federal holidays, the bridge need not open except on the hour and half-hour.

* * * * *

Dated: April 12, 1990.

J. L. Linnon,

Acting District Commander.

[FR Doc. 90-9640 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-45 and 101-46

[FPMR Amdt. H-177]

RIN 3090-AD29

Utilization and Disposal of Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation revises portions of FPMR subchapter H to implement that part of Public Law 100-612, Federal Property Management Improvement Act of 1988, pertaining to negotiated sales at fixed prices. This act improves the efficiency and

effectiveness of the management and disposal of Federal personal property.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Stanley M. Duda, Director, Property Management Division (FBP), (703) 557-1240.

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

List of Subjects in 41 CFR Parts 101-45 and 101-46

Government property management, Surplus and exchange/sale property.

PART 101-45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

1. The authority citation for part 101-45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), §§ 101-45.400 to 101-45.405 also issued under sec. 307, 49 Stat. 880; 40 U.S.C. 3041.

2. Section 101-45.304-2 is amended by revising paragraph (b) to read as follows:

§ 101-45.304-2 Negotiated sales and negotiated sales at fixed prices.

* * * * *

(b) *Negotiated sales at fixed prices.*

(1) Property may be sold at fixed prices, either directly or through the use of disposal contractors, only with prior approval by the Administrator of General Services (or designee) of the property categories to be sold.

(2) In accordance with § 101-45.304-12, prior to offering property to the public, it may be offered at fixed prices, through State agencies for surplus property, to State and local governments (States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein) which have expressed an interest in the property.

3. Section 101-45.304-12 is revised to read as follows:

§ 101-45.304-12 Sales to State and local governments.

(a) *General.* (1) State and local governments may purchase Government personal property by:

- (i) Negotiation through their State agencies for surplus property as prescribed in this § 101-45.304-12;
- (ii) Negotiation at fixed prices through their State agencies for surplus property as prescribed in this § 101-45.304-12;
- (iii) Participation in public sales of Government personal property on a competitive bid basis by having their names maintained on appropriate mailing lists.

(2) No fees or monies will be paid by the Government to State agencies for surplus property for handling these transactions. The State agencies for surplus property may impose a fee on purchasers for costs incurred.

(3) When sales are made to State and local governments, the requirements for bid deposits and payments for property prior to removal shall be waived. However, payment must be made within 30 calendar days after purchase. If payment is not made within this timeframe, simple interest may be charged at the rate which has been established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95-563), from the date of first written demand until paid.

(b) *Definitions.* The following terms shall have the meanings set forth in this § 101-45.304-12:

(1) Estimated fair market value. The selling agency's best estimate of what the property would be sold for if offered for public sale.

(2) State agency. "State agency" means the agency in each State designated under State law as responsible for the distribution within the State of all donations of surplus property to public agencies and eligible nonprofit tax-exempt activities. This agency will also be responsible for administering the program in their State whereby eligible activities may purchase Government personal property by negotiation or negotiation at fixed prices.

(3) State and local government. A State, territory, possession, political subdivision thereof, or tax-supported agency therein.

(4) Want lists. Lists of items, submitted by State agencies to selling agencies, of personal property State and local governments desire to purchase by negotiation or fixed prices.

(c) Submission of State agency requests for property. State agency requests to selling agencies for purchasing property by negotiation and negotiation at fixed prices shall include, at the minimum, the following information for each type of property requested:

(1) Name, title, address, and telephone number of official person(s) authorized to obligate funds and enter into an agreement to purchase.

(2) Geographical area(s) within which they would be willing to inspect and purchase property;

(3) Complete description of each item desired; i.e., electric typewriter not office equipment, dump truck not vehicular equipment, compact sedan not sedan;

(4) Number of days the request should be maintained on the "want list" pending availability, not to exceed 60 days (selling agencies may extend the expiration date when property is subject to seasonal availability); and

(5) Minimum poorest acceptable condition; i.e., good (usable without repairs), fair (repairable), poor (extensive repairs required).

(d) Nonwithdrawal. Property listed in invitation for bids that has been offered for sale to the general public at the time requests are received from State agencies will not be withdrawn from sale under this § 101-45.304-12.

(e) Negotiated sales. Personal property may be sold by negotiation to State and local governments through their State agencies subject to obtaining such competition as is feasible under the circumstances provided that the estimated fair market value and other satisfactory terms of disposal are obtained (see § 101-45.304-2(a)(1)(iv) and § 101-46.303(b)(1)). When two or more State agencies have indicated a desire to purchase the same item, quotations should be obtained from such interested parties. When only one State agency wants the property, and no further competition is feasible under the circumstances and all other conditions for negotiation have been met, the sale may be made.

(1) With the exception of items having an estimated fair market value of less than \$100, selling agencies may honor requests by State agencies for State and local governments to purchase property by negotiation prior to offering the property for public sale.

(2) When requested property is available for purchase, the selling agency shall take appropriate action to notify the State agency that the property

is available for sale and, when appropriate, consummate the sale in accordance with this § 101-45.304-12(e).

(3) When requested property is not presently available for purchase, selling agencies shall:

(i) Establish a "want list" system reflecting State agencies' requests for property being offered by negotiated sale.

(ii) Screen property reported for sales action against established "want lists."

(4) When a desired item becomes available for sale, the interested State agency(s) shall be advised of:

(i) The complete item description;

(ii) The condition of the item;

(iii) The item location;

(iv) Full information concerning inspection; and

(v) The estimated fair market value when only one State agency is involved.

(5) A reasonable period of time not to exceed 15 days shall be given the State agency to indicate its desire to purchase the property.

(6) Satisfactory arrangements must be made with State agencies for payment, pickup, handling, and transportation charges, when necessary. (See § 101-45.304-12(a)(3) for timeframes for payments.)

(f) Negotiated sales at fixed prices. Property approved to be sold at fixed prices may be offered through State agencies to State and local governments (see § 101-45.304-2(b)) at fixed prices prior to public sale.

(1) When property is available at the time of request, the selling agency shall notify the requesting State agency and, when appropriate, consummate the sale in accordance with this § 101-45.304-12(f).

(2) When requested property is not presently available for purchase, selling agencies shall:

(i) Establish a "want list" system reflecting State agencies' requests for property being sold at fixed prices, to include approved exchange/sale categories of property (see § 101-46.303(b)).

(ii) Screen property to be offered by fixed prices against established "want lists."

(3) When requested property becomes available, interested State agencies shall be advised of:

(i) The complete item description;

(ii) The condition of the item;

(iii) The item location;

(iv) Full information concerning inspection; and

(v) The fixed price established for the item.

(4) A reasonable period of time not to exceed 15 days shall be given the State agency(s) to indicate its desire to purchase the item. However, when more than one State agency has indicated interest in the item, the sale will be on a "first-come, first-served" basis.

PART 101-46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

4. The authority citation for Part 101-46 continues to read as follows:

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

5. Section 101-46.303 is revised to read as follows:

§ 101-46.303 Sales methods and procedures.

(a) The methods of sale, terms and conditions of sale, and forms prescribed in § 101-45.304 shall also be used in the sale of replacement property, except that negotiated sales of surplus personal property prescribed in § 101-45.304-2(a) are not applicable to the sale of property being replaced. Section 3709, Revised Statutes (41 U.S.C. 5), is applicable to such sales. While it is the policy to sell property eligible for exchange or sale after publicly advertising for bids, such property also may be sold by negotiation by GSA or the holding agency subject to obtaining such competition as is feasible when:

(1) The reasonable value involved in any one case does not exceed \$500, or

(2) Otherwise authorized by law.

(b) Property eligible for exchange or sale may be sold by negotiation at fixed prices with the prior approval of the categories by the Administrator of General Services (or designee), in the same manner and subject to the same conditions as are applicable to the sale of surplus personal property at fixed prices (see § 101-45.304-2).

(c) Property eligible for exchange or sale may be offered, pursuant to § 101-45.304-12, through State agencies, to States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein by negotiation at fixed prices prior to public sale.

Dated: February 21, 1990.

Richard C. Austin,

Acting Administrator of General Services.

[FR Doc. 90-9673 Filed 4-25-90; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 538

[Docket No. 89-09, Notice 03]

RIN 2127-AD02

Minimum Driving Range for Dual Energy and Natural Gas Dual Energy Passenger Automobiles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule establishes minimum driving range standards for the operation of dual energy and natural gas dual energy passenger automobiles on non-petroleum fuel. Promulgation of minimum driving range standards for these vehicles is required by the 1988 amendments to the Motor Vehicle Information and Cost Savings Act. Dual energy passenger automobiles are those capable of operating on alcohol and either gasoline or diesel fuel, and natural gas dual energy passenger automobiles are those capable of operating on natural gas and either gasoline or diesel fuel. The minimum range for dual energy passenger automobiles is 200 miles, and the minimum range for natural gas dual energy passenger automobiles is 100 miles. A new passenger automobile which meets the applicable range and other criteria established by the 1988 amendments qualifies to have its fuel economy calculated according to a special procedure. Under that procedure, a relatively high fuel economy figure is assigned the vehicle thus encouraging its production as a way of facilitating a manufacturer's compliance with the Corporate Average Fuel Economy Standards.

This notice also establishes procedures for manufacturers to follow in petitioning the agency to establish a lower driving range for a particular model or models of natural gas dual energy passenger automobiles and for the agency to follow in establishing such lower ranges. It also enables the agency to set lower ranges for specific models of natural gas dual energy automobiles on its own initiative.

This rulemaking was initiated on June 15, 1989 (54 FR 25539), with the publication of a request for comments on the minimum driving range criteria. A notice of proposed rulemaking was published on February 16, 1990 (55 FR 5633).

DATES: These requirements are effective May 29, 1990. Petitions for

reconsideration must be submitted within 30 days of publication.

ADDRESSES: Petitions for reconsideration should be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Orron Kee, Office of Market Incentives, NRM-21, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0846.

SUPPLEMENTARY INFORMATION: This final rule establishes minimum driving range requirements for dual energy and natural gas dual energy passenger automobiles. Dual energy passenger automobiles are those which are capable of operation on alcohol and gasoline or diesel fuel. Natural gas (NG) dual energy passenger automobiles are those which are capable of operation on natural gas and either gasoline or diesel fuel. This preamble will use these terms to distinguish between these two types of vehicles. The term "dual fuel" vehicles will be used to refer collectively to both types of vehicles.

1. Statutory Background

Section 6 of the Alternative Motor Fuels Act of 1988 (Pub. L. 100-494, October 14, 1988) amended the fuel economy provisions of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act) by adding a new section 513, containing incentives for the manufacture of vehicles designed to operate on alternative motor fuels, including dual fuel vehicles. Section 513 provides, inter alia, that the Secretary of Transportation must establish, by April 16, 1990, two minimum driving ranges, one for dual energy automobiles when operating on alcohol, and the other for natural gas dual energy automobiles when operating on natural gas. In establishing the driving ranges, the Secretary is required to consider the purposes of the Alternative Motor Fuels Act, consumer acceptability, economic practicability, technology, environmental impacts, safety, driveability, performance, and any other factors the Secretary deems relevant.

The Act and its legislative history make clear that the driving ranges are to be low enough to encourage the production of dual fuel passenger automobiles, yet not so low that motorists would be discouraged by a low driving range from actually fueling their vehicles with the alternate fuels. Section 513(h)(2)(C) provides that the range for dual energy automobiles may

not be less than 200 miles. Section 513(h)(2)(B) allows passenger automobile manufacturers to petition the agency to set a lower range for a particular model or models than the general range established by the agency for all models. However, the range may not be reduced to less than 200 miles for any model of dual energy automobile.

Neither minimum driving range is a mandatory requirement, but one of several statutory criteria which a new passenger automobile must satisfy in order to fall within the definition in section 513(h) for dual energy or natural gas dual energy automobiles. The other criteria which a passenger automobile must meet in order to be considered a dual energy automobile are that it be an automobile:

- (i) Which is capable of operating on alcohol and on gasoline or diesel fuel;
- (ii) Which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on alcohol as it does while operating on gasoline or diesel fuel; and
- (iii) Which, for model years 1993 through 1995, and, if the Administrator of the Environmental Protection Agency determines that an extension of this clause is warranted, for an additional period ending not later than the end of the last model year for which section 513(b) and (d) applies, provides equal or superior energy efficiency, as calculated during fuel economy testing for the Federal Government, while operating on a mixture of alcohol and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel[.].

The other criteria which a passenger automobile must meet in order to be considered a natural gas dual energy automobile are that it be an automobile:

- (i) Which is capable of operating on natural gas and on gasoline or diesel fuel; and
- (ii) Which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on natural gas as it does while operating on gasoline or diesel fuel[.].

By meeting these criteria, dual fuel automobiles qualify for special treatment in the calculation of their fuel economy for purposes of their manufacturers' compliance with the Corporate Average Fuel Economy Standards starting in MY 1993. The fuel economy of a dual energy passenger automobile would be the average of two values, the automobile's fuel economy when operating on gasoline or diesel fuel, and its fuel economy when operating on alcohol. Section 513(a) provides that, for the purposes of calculating that latter value, a gallon of alcohol is considered to contain 0.15

gallons of gasoline or diesel fuel. Thus, an automobile that runs 20 miles on a gallon of alcohol would be considered to have a fuel economy of 133 miles per gallon $((1/.15) \times (20))$ when operating on alcohol.

Similarly, the fuel economy of a natural gas dual energy passenger automobile would be the average of two values, the automobile's fuel economy when operating on gasoline or diesel fuel, and its fuel economy when operating on natural gas. Section 513(c) provides that, for the purposes of calculating the fuel economy of an automobile while operating on natural gas, 100 cubic feet of natural gas is considered to contain 0.823 gallons equivalent of natural gas and a gallon equivalent of natural gas is considered to contain 0.15 gallons of gasoline or diesel fuel.

Manufacturers can take advantage of these special calculation procedures in model years 1993 through 2004. The agency is authorized to extend this period up to an additional four years if it issues a rule for that purpose before January 1, 2002.

Section 513(g) limits the CAFE benefit that a manufacturer can receive in any single model year from producing automobiles that meet the above requirements. The total increase permitted in a manufacturer's Corporate Average Fuel Economy (CAFE) is 1.2 miles per gallon in any of model years 1993 through 2004 in which the manufacturer produced those automobiles and 0.9 miles per gallon in any of model years 2005 through 2008, if the Secretary determines that an extension of the provision beyond model year 2004 is warranted.

The agency notes that the statute does not require that all or even some minimum number or percentage of a manufacturer's passenger automobiles be capable of achieving the minimum driving ranges in order for any of its automobiles to qualify for the incentives. However, automobiles that do not meet the applicable minimum driving range do not qualify.

NHTSA concludes that the fuel economy value for each model type as determined using EPA test procedures is the appropriate measure for purposes of section 513. Sections 513(b) and (d) specify that the measurements are to be made under section 503(d). The latter provides that, except for the purposes of labeling under section 506, the procedures used shall be those "utilized by the EPA Administrator for model year 1975 * * * or procedures which yield comparable results."

2. Regulatory Background

As a first step in establishing minimum driving range criteria for dual fuel vehicles, NHTSA published a Request for Comments on June 15, 1989 (54 FR 25539). The notice asked several questions regarding dual energy passenger automobiles and natural gas dual energy passenger automobiles relative to the following criteria: Consumer acceptability; economic practicability; technology; environmental impacts; safety; driveability; and performance.

Comments were received from several manufacturers and natural gas associations. Based largely on information obtained from these comments, NHTSA published a notice of proposed rulemaking (NPRM) on February 16, 1990 (55 FR 5633). This notice proposed a minimum driving range requirement for dual energy passenger automobiles of 200 miles on one tank of alcohol fuel in order to be treated as a dual energy automobile, and a minimum range of 100 miles between refueling stops for a passenger automobile operating on natural gas to be treated as a NG dual energy automobile and thus qualify for the incentive provided in section 513. The NPRM also proposed procedures to enable manufacturers to petition the agency to set a lower minimum standard for specific models of NG dual energy vehicles unable to comply with the generally applicable standard. These procedures would not be available for dual energy vehicles since the proposed generally applicable standard was set at the statutory minimum of 200 miles.

As stated in the NPRM, the agency tentatively concluded these levels satisfy the twin goals of being low enough to encourage the production of dual fuel passenger automobiles, yet high enough to ensure that motorists not be discouraged from actually fueling and driving those automobiles on the alternative fuels.

3. Dual Energy Driving Range Requirements

NHTSA received comments on the NPRM from General Motors (GM), Ford, Chrysler, Nissan, Volvo, the Center for Auto Safety (CFAS), the National Automobile Dealers Association (NADA) and one individual commenter. GM, Ford, Chrysler, Nissan, Volvo, and CFAS supported the proposed 200 mile minimum range. NADA recommended a 250 mile minimum, while the individual commenter recommended a 275 mile minimum driving range.

In support of the 200 mile minimum, the manufacturers indicated that a minimum range above this level could result in the need for extensive modifications and redesign of vehicles. Volvo simply indicated that vehicle redesign would be necessary to accommodate the larger fuel tanks that would be required. GM stated that its current vehicles do not have unused space around the fuel tank, and that as a result, larger fuel tanks would require substantial redesign, consuming considerable engineering, tooling and testing resources. GM also indicated the redesign process would be costly, and could delay the introduction of dual energy vehicles. The company also noted that the increased cost and resulting price increase could discourage potential customers from purchasing the vehicles.

Chrysler stated that while minor increases in fuel tank capacity (1.5-2.0 gallons) could be accomplished for an estimated cost of \$20-25 per vehicle, more substantial increases would necessitate major design changes. Chrysler believes that a 5-10 percent increase beyond that stated above could add \$75-100 to the price of these cars. While not providing specific figures, Ford shared Chrysler's position that a slight increase in the tank capacity of some models may be possible at relatively low costs, but that significant redesign would be necessary to substantially increase capacity, and that the cost of doing so would impair the marketability of dual energy vehicles.

Ford also suggested that NHTSA revise § 538.5 of the proposed rule to refer to "nominal usable fuel tank capacity" instead of "full tank capacity." The former has a common industry understanding, and is used in the manufacturers' applications to EPA for certification. It also takes into account the fact that certain areas within each tank design cannot be filled with fuel (e.g., areas above the filler inlet opening). NHTSA agrees that this term more accurately reflects usable capacity, and has revised the final rule accordingly.

Although CFAS supported the 200 mile range, its support is based on its general opposition to increased use of methanol as a motor fuel, and because of its opposition to the granting of CAFE credits to manufacturers of dual fuel vehicles. However, these issues are beyond the scope of this rulemaking. NHTSA notes, moreover, that the CAFE credits for manufacturers of dual fuel vehicles complying with the other requirements set out above are mandated by statute.

NADA supported a 250 mile range due to concerns about consumer acceptability. The Association believes that vehicles capable of only a 200 mile range will be unacceptable to consumers. In addition, NADA stated that the vast majority of MY 1989 passenger automobiles could achieve a 250 mile range, and that those vehicles which are likely candidates for conversion to dual energy vehicles, but cannot currently meet that criterion could be modified at a reasonable cost by MY 1993. NADA disagrees with NHTSA's assumption in the NPRM that the reduced range of dual energy vehicles would be offset by improved performance characteristics, because NADA believes this assumption is only valid if the alternative fuels are reasonably available.

The individual commenter recommended a 275 mile minimum range based upon marketing and geographical concerns. The commenter believes that a 200 mile range is not practical, and therefore is not marketable, and that minivans and other vehicles that blur the "conventional distinction between cars and trucks" will be the primary candidates for conversion to dual energy operation. The commenter maintains that these vehicles have greater fuel storage capacity. However, no data was supplied to support this contention. In addition, no information was provided to support the commenter's claim that 275 miles was an achievable range for the passenger automobiles that are the subject of this rulemaking. NHTSA notes that under the Cost Savings Act, minivans and other "hybrid vehicles" are not considered "passenger automobiles," and are therefore not subject to the minimum driving range requirement or the CAFE incentives.

The commenter had other suggestions for improving the marketability of dual energy vehicles, including relaxing safety requirements. Those suggested actions are beyond the scope of this rulemaking.

The substantial majority of commenters supported NHTSA's proposed 200 mile minimum range for dual energy passenger automobiles. As noted above, the purpose behind the minimum range requirement is to encourage the manufacture and sale of dual energy vehicles. The agency believes that the range should be set at a level that would not impose unreasonable increased costs for fuel tank and structural changes in order to achieve that range. As pointed out by several commenters, these costs would be passed on in the form of higher vehicle prices to consumers, thereby

affecting the competitiveness of these vehicles in the marketplace. NHTSA believes further that the range should be set at a level which gives the manufacturers broad flexibility in selecting the models to be offered with dual energy capability.

At the same time, NHTSA recognizes the importance of ensuring that the vehicles produced have a large enough range so as to be considered practical choices for consumers. It is likely that some consumers would reject a vehicle capable of only a 200 mile range.

However, since the range will be a minimum, not a maximum, and since consumer acceptability will be an important consideration of manufacturers in selecting which vehicles to offer with dual energy capability, the agency anticipates that the vast majority of dual energy vehicles offered for sale would likely be capable of driving ranges considerably higher than this minimum. As Ford noted in its response to the agency's Request for Comments, nearly 80 percent of its MY 1989 passenger fleet would be capable of achieving at least a 250 mile range if converted to dual energy operation. Likewise, GM noted that nearly 70 percent of its MY 1989 fleet would be above that figure. NHTSA believes that, instead of choosing to make all existing models available as dual energy models, manufacturers are likely to select those models capable of higher ranges as candidates for dual energy use. Consumers concerned about the range could choose those models. Moreover, since these vehicles have the potential to operate on alcohol, conventional fuels, or a combination of the two, consumers will always have the option of using conventional fuel in those instances where the reduced range is likely to create unusual problems (e.g., long distance travel through areas where alcohol fuels may not be easily available).

Based on its consideration of the available information, including the comments received and the factors set out in the Alternative Fuels Act, the agency concludes that 200 miles is an appropriate minimum driving range for dual energy passenger automobiles. The 200-mile range can be achieved without any increase in the size of existing fuel tanks, which would be used for both types of fuel. Thus, the agency believes the range is consistent with available technology.

Based on the comments received, NHTSA believes that setting a minimum driving range substantially higher than 200 miles would, in some instances, require fuel tanks that would be

significantly larger than current tanks. In order to install a tank of that size, a manufacturer would have to redesign its automobiles. As noted in the manufacturer comments discussed above, the costs of doing so could be significant. In their comments, the manufacturers expressed a reluctance to redesign their automobiles and install larger tanks in order to achieve an alcohol driving range equivalent to that of a petroleum fuel passenger automobile. They stated that such a redesign could be extremely expensive and could make it necessary to recertify compliance with applicable Federal safety standards (e.g., FMVSS 301, Fuel System Integrity).

The 200 mile standard means that automobile manufacturers will not have to make compensatory design changes to ensure that the weight of a larger tank loaded to capacity with fuel would not adversely affect the braking, handling or performance of existing automobiles. A larger tank would exacerbate the variation in a vehicle's weight between the times that it has a full tank and the times that it has a nearly empty one. Manufacturers must design vehicles to take into account the effects which such variations in vehicle weight have on vehicle handling and braking. In addition, manufacturers would have to recertify that the vehicle, when loaded to its maximum weight, still meets all applicable safety standards.

Driving Range for Natural Gas Dual Energy Automobiles

The Alternative Fuels Act also requires that a minimum driving range be established for natural gas (NG) dual energy automobiles, although it does not specify that the range must equal or exceed some minimum value. The NPRM proposed a minimum range of 100 miles for NG dual energy automobiles. GM, Ford, Chrysler, CFAS, NADA, the American Gas Association (AGA) and one individual commenter provided comments on the proposed range for NG dual energy vehicles.

GM suggested that the agency does not need to set a minimum range for NG dual energy automobiles at this time, but did not take issue with the 100 mile range coupled with the petition procedure which would enable manufacturers to petition for a lower minimum range for specific models of NG dual energy vehicles. The company pointed out that increasing the range of NG dual energy vehicles would be accomplished by using more or larger high pressure cylinders. This would result in increased costs and less storage space, as the cylinders are typically located in the trunk. GM is also

concerned about the impact on driveability and potential loss of fuel economy from additional gas cylinders.

NHTSA notes that it has no discretion as to whether to set a minimum range for NG dual energy vehicles. Such a range is explicitly required by section 513(h)(2)(A) of the Cost Savings Act. The agency agrees that increasing the driving range of NG dual energy vehicles by increasing fuel storage space can have negative impacts on driveability and fuel economy.

Ford and Chrysler both supported the proposed range for NG dual energy vehicles, but both noted that they did not have a great deal of information on these vehicles. Ford emphasized that the costs of conversion to NG dual energy vehicles are very preliminary, and are likely to exceed by several times the incremental costs mentioned in the NPRM.

The AGA supported the proposed minimum range, and stated that the natural gas industry has concluded that the most cost effective current target for natural gas use is the fleet vehicle that returns to a central refueling station after each shift. AGA emphasized that it views NG dual energy propulsion as a technology "bridge" between current technology and improved future technology.

In its comments, the Association stated that since the targeted vehicles are those with access to a centralized refueling facility, they need not exceed the driving ranges that are now attained with natural gas conversion equipment now in use. The comments did not specify what this range is. Another consideration raised by the AGA concerned the use of NG dual energy propulsion in utility vehicle fleets. The AGA stated that these vehicles are frequently used to provide power for equipment, lighting and communications at service locations, and that this prolonged idling will reduce the effective driving range of these vehicles. However, NHTSA notes that the vehicles used in these applications are not typically passenger automobiles; rather, they are light trucks or MPVs which are not subject to this rulemaking.

NADA concurred that NG dual energy vehicles are likely to be used primarily in fleet service, with centralized refueling facilities, but did not express an opinion on the proposed minimum range.

CFAS recommended that the minimum range be set at 200 miles or slightly lower, because it believes a 100 mile range is impractical even for fleet applications, as vehicles would be unable to travel more than 50 miles

away from refueling facilities. While CFAS says that direct use of natural gas is considerably more efficient than the use of natural gas to produce methanol, and that natural gas has environmental benefits, it opposes encouraging the use of natural gas through the granting of CAFE credit. CFAS believes it is inappropriate for manufacturers to receive this credit for manufacturing a car that is likely to see little use with natural gas.

CFAS provided no information to support its recommendation of a 200 mile range as a practical range. Based on the information available to it, NHTSA believes that a minimum range at that level would be viewed as impractical by manufacturers and would serve to discourage the production of NG dual energy vehicles. While CFAS's objections to the incentives chosen by Congress to encourage the use of alternative fuels are beyond the scope of this rulemaking, NHTSA notes that it is unlikely that consumers would be willing to pay the considerable increased costs for a NG dual energy automobile unless they actually intended to operate it on natural gas. NHTSA thus disagrees with the group's position that manufacturers will, in effect be receiving a CAFE "bonus" for producing vehicles that are unlikely to be operated on natural gas.

The individual commenter recommended that the minimum range for NG dual energy vehicles be set at 200 miles for the same reasons that he recommended a higher range for dual energy vehicles. These are discussed above. Like CFAS, he provided no information to support his contention that such a range is achievable. NHTSA disagrees with this recommendation for the reasons stated above.

NHTSA believes that a 100-mile range will not lead to the production of vehicles with so low a natural gas operating range that it would impede the development and sale of natural gas dual energy vehicles. The agency notes that a natural gas dual energy vehicle still has the gasoline fuel tank as a range extender. In addition, the 100-mile criterion represents a minimum range that would likely be exceeded by vehicle manufacturers. Market forces will assure that vehicles will not be produced unless purchasers are satisfied with their capabilities.

Based on its consideration of the information available, including the comments discussed above, and the factors set forth in the Alternative Motor Fuels Act, the agency concludes that NG dual energy passenger automobiles can

achieve a minimum driving range of 100 miles while operating on natural gas.

On average, the cost of natural gas fuel tanks needed to achieve a 100 mile range would be from \$386-\$579, depending on design and construction material.

In order to achieve a higher range, vehicles would have to be equipped with additional storage tanks. Doing this would pose significant problems since weight and available space are limiting factors. As noted above, for the 100-mile range, the additional tanks would cost \$386 to \$579 and add \$46 to lifetime fuel costs due to the added weight. In addition, these tanks would reduce available trunk space by about 3.4 cubic feet. The added weight would have a negative impact on vehicle performance and driveability.

The agency believes that the 100 mile range is sufficient to meet the needs of the likely purchasers of natural gas dual energy automobiles. The agency agrees with the commenters that suggest the most likely passenger automobiles that would be converted to burn natural gas are fleet passenger automobiles and taxis because of their high annual fuel consumption and access to central company-owned refueling facilities. Access to such facilities would enable these companies to accommodate the range established by this rule. This range might be less adequate for private owners of natural gas passenger automobiles since they may have limited access to natural gas refueling facilities. Therefore, for the private owner, driving range is likely to be a major factor in the selection of a natural gas dual energy automobile until refueling facilities are more plentiful. The agency believes that the 100 mile range represents an achievable level, consistent with available technology which will not be unduly impractical or have negative impacts upon consumer acceptability, vehicle driveability or performance.

Presently, the agency is not aware of any significant safety risks associated with alcohol or natural gas fuel for dual energy passenger automobiles attributed specifically to the magnitude of vehicle driving range or fuel tank size. All gasoline and diesel powered automobiles are required to comply with FMVSS No. 301: Fuel System Integrity. Alcohol-powered vehicles are likewise required to comply with Standard 301. The natural gas fuel system of a natural gas dual energy vehicle will not be required to comply with Standard 301 because that standard applies only to vehicles which use a fuel having a boiling point above 32 °F, while natural gas has a boiling point below 32 °F.

NHTSA expects to publish advance notices of proposed rulemaking later this year as part of its effort to determine whether additional requirements are necessary to enhance the safety of vehicles operating on alcohol or natural gas.

Procedures Establishing Lower Driving Ranges for Particular Models of Natural Gas Dual Energy Automobiles

Section 513(h)(2)(B)(i) requires that the rule establishing the driving ranges also allow the agency to determine that a specific model or model type may have a lower range than the generally established range and establish procedures for manufacturers to petition the agency to specify such a lower range. As noted above, section 513(h)(2)(B)(ii) provides that lower ranges may not be established for dual energy automobiles if the agency selects the 200 mile statutory minimum as the driving range for those automobiles. Since this notice establishes that minimum value, the petitioning procedures apply only to natural gas dual energy automobiles. NHTSA received no comments on the substance of the proposed procedure for petitions, and the final rule makes no changes to these procedures.

The procedures specify that petitioning manufacturers must address each of the factors which the agency is required by section 513(h)(2)(D) to take into account in establishing lower driving ranges, i.e., the purposes of the Alternative Motor Fuels Act of 1988, consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, performance, and any other factors the agency deems relevant. This notice does not establish any additional factors.

Following its receipt of a petition, the agency will publish a notice summarizing the petition and inviting public comment. Then the agency will consider the comments and other available information and publish a final decision in accordance with section 513(h)(2)(D).

Regulatory Impacts

The agency has analyzed the economic and other effects of this rule and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. However, the agency has prepared a regulatory evaluation that quantifies the potential impacts of this rule, and has placed it in the public docket.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the rule will not have a significant economic impact on a substantial number of small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. Moreover, the decision of manufacturers to produce dual fuel vehicles would be a voluntary one made in part to achieve beneficial CAFE treatment of those vehicles. Therefore, no significant costs are being imposed on any manufacturer. Accordingly, preparation of a regulatory flexibility analysis is not required.

The agency has also analyzed this rule for the purposes of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment. The agency concludes that increased evaporative emissions due to added fuel volume would be the most important environmental impact of this rulemaking if it induced manufacturers to enlarge the size of existing fuel tanks in order to produce dual energy vehicles operating on alcohol fuel. However, the minimum range established does not make it necessary for dual energy automobiles to have enlarged fuel tanks. Natural gas dual energy passenger automobiles should not have increased evaporative emissions since the natural gas tanks do not normally vent to the atmosphere. Further, all dual energy cars are required to meet EPA emissions standards, of course, using the worst case fuel for each type of test. Should other environmental impacts become known, the agency will present analyses of the significance of these impacts.

The requirements contained in § 538.7 of this rule, concerning petitions for reduction of minimum driving range for specific models of natural gas dual energy automobiles, are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to OMB for its approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the *Federal Register* when OMB makes its decision on this request.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 538

Energy conservation, Gasoline, Imports, Motor Vehicles.

PART 538—[AMENDED]

In consideration of the foregoing, 49 CFR chapter V is amended by adding part 538 to read as follows:

PART 538—DRIVING RANGES FOR DUAL ENERGY AND NATURAL GAS DUAL ENERGY PASSENGER AUTOMOBILES

Secs.

- 538.1 Scope.
- 538.2 Purpose.
- 538.3 Applicability.
- 538.4 Definitions.
- 538.5 Minimum driving range.
- 538.6 Measurement of driving range.
- 538.7 Petitions for reduction of minimum driving range.

Authority: Sec. 6, Pub. L. 100-494, 100 Stat. 2448 (15 U.S.C. 2013); delegation of authority at 49 CFR 1.50.

§ 538.1 Scope.

This part establishes minimum driving range criteria to aid in identifying passenger automobiles that are either dual energy automobiles or natural gas dual energy automobiles. It also establishes procedures by which manufacturers may petition for a lower driving range for a specific model of natural gas dual energy automobile and by which the agency may grant or deny such petitions.

§ 538.2 Purpose.

The purpose of this part is to specify one of the criteria in section 513(h) of the Act for identifying dual energy and natural gas dual energy passenger automobiles that are manufactured in model years 1993 through 2004. The fuel economy of these passenger automobiles is calculated in a special manner so as to facilitate the compliance of their manufacturers with the Corporate Average Fuel Economy Standards set forth in part 531 of this title and thereby encourage the production of such vehicles.

§ 538.3 Applicability.

This part applies to manufacturers of passenger automobiles that are either dual energy or natural gas dual energy passenger automobiles manufactured during model years 1993-2004.

§ 538.4 Definitions.

(a) Statutory terms. (1) The terms *dual energy automobile*, *natural gas dual energy automobile*, and *alcohol* are used

as defined in section 513 of title V of the Act.

(2) The terms *automobile* and *passenger automobile*, are used as defined in section 501 of the Act and in accordance with the determinations in part 523 of this chapter.

(3) The term *manufacturer* is used as defined in section 501 of the Act and in accordance with part 529 of this chapter.

(4) The term *model year* is used as defined in section 501 of the Act.

(5) As used in this part, unless otherwise required by the context: *Act* means the Motor Vehicle Information and Cost Savings Act (Pub. L. 92-513), as amended.

(b) Other terms. The terms *average fuel economy*, *fuel economy*, and *model type* are used as defined in subpart A of 40 CFR part 600.

§ 538.5 Minimum driving range.

(a) The minimum driving range which a passenger automobile must have in order to be treated as a dual energy automobile pursuant to section 513(1)(C) of the Act is 200 miles when operating on its nominal usable fuel tank capacity of alcohol fuel.

(b) Except as provided in § 538.7, the minimum driving range which a passenger automobile must have in order to be treated as a natural gas dual energy automobile pursuant to section 513(1)(D) of the Act is 100 miles when operating on its nominal fuel tank capacity of natural gas.

(c) The Administrator may determine that a specific model type or types of natural gas dual energy automobiles may have a lower range than that specified in paragraph (b) of this section and still qualify as a natural gas dual energy automobile for purposes of the section. In making such a determination, the Administrator takes into account the factors specified in § 538.7(f).

§ 538.6 Measurement of driving range.

The driving range of a passenger automobile model type is determined by multiplying the combined EPA city/highway fuel economy when operating on the alcohol or natural gas fuel by the nominal usable fuel tank capacity in gallons, of the fuel tank containing the alcohol or natural gas. The combined EPA city/highway fuel economy is the value determined by the procedures established by the Administrator of the Environmental Protection Agency under section 503(d) of the Act and set forth in 40 CFR 600.

§ 538.7 Petitions for reduction of minimum driving range.

(a) A manufacturer of a model type of passenger automobile capable of

operating on both natural gas and either gasoline or diesel fuel may petition for a reduced minimum driving range for that model type in accordance with paragraphs (b) through (c) of this section.

(b) Each petition shall—

(1) Be addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

(2) Be submitted not later than the beginning of the first model year in which the petitioner seeks to have the model type treated as a natural gas dual energy automobile.

(3) Be written in the English language.

(4) State the full name, address, and title of the official responsible for preparing the petition, and the name and address of the petitioner.

(5) Set forth in full data, views and arguments of the petitioner, including the information and data specified in § 538.7(b) and the calculations and analyses used to develop that information and data. No documents may be incorporated by reference in a petition unless the documents are submitted with the petition.

(6) Specify and segregate any part of the information and data submitted under this section that the petitioner wishes to have withheld from public disclosure in accordance with part 512 of this chapter.

(c) Each petitioner shall include the following information in its petition.

(1) Identification of the model type or types for which a lower driving range is sought under this section.

(2) For each model type identified in accordance with paragraph (c)(1) of this section:

(i) The driving range sought for that model type.

(ii) The number of years for which that driving range is sought.

(iii) A description of the model type, including car line designation, engine displacement and type, natural gas fuel tank location and capacities, transmission type and average fuel economy when operating on:

(A) Natural gas, and

(B) Gasoline or diesel fuel.

(iv) An explanation of why the petitioner cannot modify the model type so as to meet the generally applicable minimum range, including the steps taken by the petitioner to improve the minimum range of the vehicle, as well as additional steps that are technologically feasible, but have not been taken. The costs to the petitioner of taking these additional steps shall be included.

(3) A discussion of why granting the petition would be consistent with the following factors:

(i) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of natural gas as a transportation fuel by consumers, and the production of passenger automobiles capable of being operated on both natural gas and gasoline/diesel fuel;

- (ii) Consumer acceptability;
- (iii) Economic practicability;
- (iv) Technology;
- (v) Environmental impact;
- (vi) Safety;
- (vii) Driveability; and
- (viii) Performance.

(d) If a petition is found not to contain the information required by this section, the petitioner is informed about the areas of insufficiency and advised that the petition will not receive further

consideration until the required information is received.

(e) The Administrator may request the petitioner to provide information in addition to that required by this section.

(f) The Administrator publishes in the Federal Register a notice of receipt for each petition containing the information required by this section. Any interested person may submit written comments regarding the petition.

(g) In reaching a determination on a petition submitted under this section, the Administrator takes into account:

(1) The purposes of the Alternative Motor Fuels Act, including encouraging the development and widespread use of methanol, ethanol and natural gas as transportation fuels by consumers, and the production of alternative fuel powered motor vehicles;

- (2) Consumer acceptability;
- (3) Economic practicability;

- (4) Technology;
- (5) Environmental impact;
- (6) Safety;
- (7) Driveability; and
- (8) Performance.

(h) If the Administrator grants the petition, the petitioner is notified in writing, specifying the model years for which it applies. He also publishes in the Federal Register a notice of the grant and the reasons for it.

(i) If the Administrator denies the petition, the petitioner is notified in writing. He also publishes in the Federal Register a notice of the denial and the reasons for it.

Issued on April 8, 1990.

Jeffrey R. Miller,
Deputy Administrator.

[FR Doc. 90-9654 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register

Vol. 55, No. 81

Thursday, April 26, 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

Agricultural Marketing Service

7 CFR Part 981

[FV-89-118E]

Almonds Grown in California; Extension of Comment Period on Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and Extension of Comment Period.

SUMMARY: Notice is hereby given that the time period for filing written comments is reopened and extended on the proposed rule published in the March 14, 1990, issue of the *Federal Register* (55 FR 9457) for almonds grown in California. The comment period is extended until May 14, 1990.

DATES: Written suggestions, views, or pertinent information will be considered if received by May 14, 1990.

ADDRESSES: Interested persons are invited to submit written statements in triplicate to: Docket Clerk, F&V, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Such submissions should reference the docket number and the date and page number of the *Federal Register* and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sheila A. Young, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525, South Building, Washington, DC 20090-6456; telephone (202) 475-5992.

SUPPLEMENTARY INFORMATION: The proposed rule to amend the administrative rules and regulations of the almond marketing order was issued under Marketing Order 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. This order is issued pursuant to the Agricultural Marketing Agreement Act

of 1937 (7 U.S.C. 601-674), as amended. The proposed rule was issued on March 9, 1990, and published on March 14, 1990, in the *Federal Register* (55 FR 9457). It proposed amending the administrative rules and regulations of the almond marketing order concerning crediting for marketing promotion and paid advertising expenditures. Comments were requested to be received by April 13, 1990.

The U.S. Department of Agriculture has received a request to extend the deadline to provide more time for interested persons, including growers and handlers, to analyze the proposed rule.

Reopening and extending the comment period will provide such interested persons more time to review this proposed rule and submit written views and information pertinent to the proposed changes. Accordingly, the comment period is reopened and extended to May 14, 1990.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

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

Dated: April 20, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-9645 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1485

Foreign Market Development

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to revise its regulations with respect to the conduct of the Targeted Export Assistance (TEA) Program. This proposed rule would expand the existing regulations by incorporating therein program requirements that presently appear only in the TEA agreements and guidelines.

Also, the Department of Agriculture seeks comment on the Preliminary Regulatory Impact Analysis.

DATES: Comments must be received on or before June 25, 1990, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Marketing Programs Division, Foreign Agricultural Service, USDA, room 4932-S, Washington DC 20250-1000.

All comments received will be available for public inspection during regular business hours at the U.S. Department of Agriculture, room 4932-S, 14th and Independence Avenue SW., Washington, DC 20250-1000.

FOR FURTHER INFORMATION CONTACT:

Richard Passig, Director, Marketing Programs Division, Foreign Agricultural Service, USDA, Telephone: (202)-447-5521. The Preliminary Impact Analysis describing the options considered in developing this proposed regulation and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "major." It has been determined that the provisions of this rule will result in an annual effect on the economy of \$100 million or more. It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This proposed rule includes a Preliminary Regulatory Impact Analysis, as required for a major rule under Executive Order No. 12291, and the U.S. Department of Agriculture seeks comment on this Preliminary Regulatory Impact Analysis, particularly in response to the issues listed below. The Department will also prepare a more detailed analysis in connection with the final rule, in accordance with Executive Order No. 12291, and will make it available for comment before issuing the final rule. As noted above, the

Preliminary Regulatory Impact Analysis is available from Richard Passig, telephone (202) 447-5521, address as given above.

The issues relating to the Preliminary Regulatory Impact Analysis on which the Department specifically seeks comment are the following:

1. Regarding the description of the potential benefits of the rule:

(a) How can some generalized conclusions on net benefits be made? The specific benefit-cost ratios used are derived from specific cases. How can these ratios validly be extrapolated to the whole program?

(b) A chief objective of the TEA program is to counter or offset the adverse impact on exports of U.S. agricultural commodities of competition or unfair trade practices of foreign countries. Should the effects of the TEA on unfair trade practices be specifically examined as an intangible benefit? Have there been other unintended effects in the international agricultural markets, affecting, for instance, fair-trading exporters?

(c) The changes in exchange rates and international agricultural prices have greatly affected international agricultural markets. How can the effects of the changes in these variables be adequately considered in the analysis?

2. Regarding the description of the potential costs of the rule:

(a) How can the opportunity costs of the commodity certificates used to finance the TEA be accurately measured;

(b) How does this government funded market development program relate to private efforts in the area of market development?

3. Regarding the description of alternative approaches:

With the exception of direct subsidies, the options considered focus on the funding mechanism for TEA rather than on the programmatic activity selected, specifically market development. What other alternative program designs (including perhaps a "do nothing" alternative of no government-funded market development) should be examined for comparison purposes?

4. Regarding the data used:

Does the Preliminary Regulatory Impact Analysis use adequate information to evaluate the program? What data is needed to evaluate the TEA program? Has the necessary data been collected? Should more data be collected on the program during implementation and how can it be obtained?

General Background

Section 1124 of the Food Security Act of 1985, as amended (7 U.S.C. 1736s), directs the Secretary of Agriculture to use a specified amount of funds of, or commodities owned by, Commodity Credit Corporation (CCC) to counter or offset the adverse effect on the export of a United States agricultural commodity or the product thereof of a subsidy, import quotas, or other unfair trade practices of a foreign country. Section 1124 requires that priority assistance be provided for U.S. agricultural commodities which have received a favorable decision under section 301 of the Trade Act of 1974 and for those the exports of which have suffered retaliatory action as a consequence of a favorable section 301 decision.

The Targeted Export Assistance (TEA) Program was initiated to carry out this statutory mandate by increasing exports of agricultural commodities through overseas promotion activities. As currently operated, CCC enters into a TEA Program Agreement with non-profit organizations, regional state groups, or a TEA/Export Incentive Program (EIP) Agreement with private U.S. firms to share costs incurred in the foreign promotion of U.S. agricultural commodities. CCC currently reimburses program participants for eligible foreign market development activities through the issuance of commodity certificates.

The statutory mandate to operate a TEA program expires with fiscal year 1990. Nevertheless, it is deemed desirable at this time to incorporate program participation requirements contained in program agreements into regulation form since activities undertaken pursuant to agreements entered into prior to fiscal year 1990 will extend beyond that year. Also, regulations would be in place should a program similar to the current TEA program be initiated after fiscal year 1990.

On September 13, 1989, CCC published a final rule adding a new part 1485 to title 7 of The Code of Federal Regulations. This part contains regulations governing the TEA program. This proposed regulation revises and expands part 1485 by generally incorporating program requirements currently contained in the TEA agreements and TEA Guidelines that are appropriate for regulations. Interested persons are cautioned to closely review this proposal since a number of provisions have been rewritten and revised. Of particular significance are new provisions relating to:

1. Allocation criteria considered by CCC in its review of applications for

participation in TEA and TEA/EIP programs.

2. Minimum contribution of resources by TEA Participants equivalent to no less than five percent of the TEA resources approved.

3. Disallowance of TEA resources for the acquisition, maintenance or insurance of residential property.

4. Limitations on the use of TEA resources to reimburse salary and allowance related expenses of TEA participant employees and consultants overseas.

5. Advances of TEA resources, which would not be available for branded promotions.

6. A maximum reimbursement rate of 50 percent established for payment of eligible reimbursable expenses for any branded programs.

7. Standard application and allocation procedures for all programs.

8. Reimbursement for travel which will be made in accordance with the U.S. Travel Regulations (41 CFR parts 301, 302, 303, 304).

9. The time period within which claims must be submitted to be reimbursed by CCC, which would be shortened to six months after the end of the activity plan period.

Current regulations regarding program participation, commonly referred to as "conflict of interest" requirements, are not being revised.

Upon adoption of final regulations, the forms of TEA agreements will be revised accordingly and guidelines will be eliminated. This proposed rule does not apply to the Cooperator program which is governed by the rules appearing at 7 CFR part 1550. The Foreign Agricultural Service, USDA, is considering revising such regulations in a manner similar to this proposal. Such revision would be the subject of a separate proposed rule.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

Accordingly, it is proposed to revise part 1485 of title 7 of the Code of Federal Regulations to read as follows:

PART 1485—COOPERATIVE AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

Sec.

1485.1 Purpose and scope.

1485.2 Definitions.

1485.3 Program agreements.

1485.4 Program application procedures and allocation criteria.

1485.5 TEA and TEA/EIP activity plans.

1485.6 TEA participant contributions.

Sec.

- 1485.7 Expenditures for which reimbursement may be claimed.
- 1485.8 TEA participant overseas office expenses and related matters.
- 1485.9 TEA participant compensation levels for foreign national and U.S. citizen employees, staff consultants, and technical consultants.
- 1485.10 TEA participant employment of overseas personnel.
- 1485.11 TEA participant travel expenses.
- 1485.12 TEA participant reports.
- 1485.13 TEA participant evaluation.
- 1485.14 TEA resources financial management and accounting.
- 1485.15 TEA resource reimbursement claims and advance requests.
- 1485.16 Expired or terminated TEA resources.
- 1485.17 Compliance review.
- 1485.18 Brand promotions administered by TEA participants.
- 1485.19 TEA/Export Incentive Program (TEA/EIP) agreements—special provisions.
- 1485.20 Program participation and benefits.
- 1485.21 Compliance with program requirements.
- 1485.22 Paperwork Reduction Act assigned number.

Authority: Sec. 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)).

§ 1485.1 Purpose and scope.

This part sets forth policies and requirements with respect to the conduct by the Commodity Credit Corporation (CCC) of the Targeted Export Assistance (TEA) program. In addition, § 1485.20 applies to any other programs of the CCC that specifically incorporate the provisions of such section.

§ 1485.2 Definitions.

(a) *Activity* means a specific foreign market development effort undertaken in a market by a TEA or TEA/EIP Participant as described and budgeted in an activity plan approved by CCC the costs of which may be reimbursed with TEA resources or claimed as a contribution.

(b) *Activity plan* is the document which describes a TEA or TEA/EIP Participant's worldwide export promotion strategy by activity, and which, when approved by CCC, authorizes expenses to be reimbursed with TEA resources or claimed as contributions.

(c) *Administrator* means the Administrator, Foreign Agricultural Service (FAS), who is also the Vice President of the Commodity Credit Corporation (CCC), or his designee.

(d) *Affiliate or affiliated organization* means any partnership, association, company, corporation, trust, or any other legal entity in which the TEA

Participant has any investment other than an investment in any mutual fund.

(e) *Attache/Counselor* means the FAS representative having responsibility for, or stationed in the U.S. Embassy, Consulate or Agricultural Trade Office in, a foreign country where TEA or TEA/EIP activities are being conducted.

(f) *Agricultural commodities* includes U.S. agricultural commodities and products thereof.

(g) *Brand commodity or Brand Product* means an agricultural product which incorporates agricultural commodities and which, when promoted or marketed, is identified by a privately-owned U.S. or foreign label or brand name.

(h) *Brand Promotion* means an activity which involves reimbursement of any costs to promote a brand commodity.

(i) *CCC* means the Commodity Credit Corporation.

(j) *Commodity Programs Division Director* means the Director of the Commodity Program Division, Commodity and Marketing Programs, FAS, having responsibility for the commodity covered by a TEA or TEA/EIP program agreement.

(k) *Constraint* means an impediment to increasing U.S. exports of a specific agricultural commodity or product to a specific market which a TEA activity or group of activities is designed to mitigate or alleviate.

(l) *Foreign Third Party or Third Party Participant* means a foreign government or private organization which has entered into a written or documented oral agreement with a TEA or TEA/EIP Participant to assist in promoting the export of agricultural commodities or brand products.

(m) *Foreign Third Party Contributions* mean cash or in-kind contributions (e.g., personnel, materials, facilities, services or supplies) expressed in terms of U.S. dollar value, that are furnished by foreign third parties in direct support of and in accordance with activities approved in the TEA Participant's activity plan.

(n) *Sales teams* are teams engaged in activities intended to result in specific sales by team members.

(o) *TEA/EIP Participant* shall be deemed to mean a private U.S. firm entering into a TEA/EIP Program Agreement within the scope of § 1485.19.

(p) *TEA/EIP Program Agreement* means the agreement between CCC and a private U.S. firm for which CCC has approved an allocation of TEA resources.

(q) *TEA Participant* shall be deemed to mean any nonprofit agricultural trade association or regional state group

entering into an TEA program agreement within the scope of this part 1485.

(r) *TEA Participant Contributions* mean cash or in-kind contributions (e.g., personnel, materials, facilities, services, or supplies), expressed in terms of U.S. dollar value, that are furnished by the TEA Participant organization itself which were not, and will not be, reimbursed by CCC, the U.S. industry or a third party Participant.

(s) *TEA Program Agreement* means the agreement between CCC and a nonprofit agricultural trade association or regional state group for which CCC has approved an allocation of TEA resources.

(t) *Trade teams* are teams engaged in activities to promote the interests of the entire agricultural sector represented by the TEA Participant.

(u) *Unfair Trade practice* means the subsidy, import quota or other unfair foreign trade practice, which has adversely affected exports of a U.S. agricultural commodity. Subsidy includes an export subsidy, tax rebate on exports, financial assistance on preferential terms, financial assistance for operating losses, assumption of costs or expenses of production, processing, or distribution, a differential export tax or duty exemption, a domestic consumption quota, or other method of furnishing or ensuring the availability of raw materials at artificially low prices.

(v) *U.S. Industry Contributions* mean cash or in-kind contributions (e.g., personnel, materials, facilities, services, or supplies) expressed in terms of U.S. dollar value, that are furnished by the U.S. industry in direct support of and in accordance with activities approved in the TEA Participant's activity plan.

§ 1485.3 Program agreements.

(a) *Targeted Export Assistance Program Agreements.* (1) TEA program agreements are for the purpose of countering or offsetting the adverse effect on exports of agricultural commodities of an unfair trade practice of a foreign country.

(2) A TEA Participant may undertake activities directly or through a third party provided that such Participant remains responsible for the activities of the third party.

(3) TEA Participants are expected to contribute funds or make in-kind contributions toward completion of approved market development projects.

(4) CCC will make commodity certificates or, at the option of CCC, U.S. dollar funds, available up to the amount stated in the TEA Program Agreement, to reimburse TEA Participants for

expenditures incurred in conducting activities authorized by the agreement and described and budgeted in an activity plan approved in advance by CCC.

(b) *Targeted Export Assistance/Export Incentive Program (TEA/EIP) Agreements.* (1) TEA/EIP Program Agreements are for the same purposes as TEA Program Agreements, but are limited to the promotion of specific brand products in export markets. The agreements will be entered into when CCC determines that such a program is an appropriate means of expanding total U.S. exports of the agricultural commodity concerned.

(2) TEA/EIP program agreements will be only entered into between CCC and private U.S. entities.

(3) Under a TEA/EIP program agreement, private U.S. firms may be reimbursed no more than 50 percent of approved eligible direct promotional costs incurred to promote specific brand products in foreign markets.

(4) An entity that enters into a TEA/EIP program agreement may undertake market development activities directly or through a foreign third party provided such entity remains responsible for the activity.

(5) Any private U.S. firm may submit an application requesting TEA resources for the establishment of a TEA/EIP program for a specific agricultural commodity. If an allocation is approved for such a TEA/EIP program, it will be announced to enable all private U.S. firms to have an opportunity to apply and participate on an equal basis.

§ 1485.4 Program application procedures and allocation criteria.

(a) *General.* CCC will annually announce the availability of the TEA and TEA/EIP programs through publication of a notice in the **Federal Register**. All applicants should submit TEA proposals directly to CCC to ensure they are received by the deadline prescribed in the **Federal Register** announcement. CCC may direct private U.S. firms interested in brand promotion activities to work directly through a TEA Participant. Private firms should review the requirements of § 1485.18 regarding application procedures for the promotion of brand commodities by TEA Participants and also § 1485.19 regarding TEA/EIP program application procedures and criteria.

(b) *Contents of Applications.* The specific application requirements, procedures, and deadline for any given year are published in the **Federal Register** and may differ from those described herein, however, an applicant

must submit a written proposal to the Administrator which provides:

(1) A description of the agricultural commodity for which TEA resources are being requested;

(2) A statement regarding the anticipated export availability of the agricultural commodity during the life of the program;

(3) The quantity and value of U.S. exports for the agricultural commodity during the most recent three year period for which data is available, and the source of such information;

(4) The unfair foreign trade practice which has adversely affected the agricultural commodity;

(5) The manner and extent to which the practice has affected U.S. exports of the agricultural commodity setting forth an estimate of the export loss attributable to the unfair trade practice in both dollar and volume terms since the unfair trade practice was first implemented or the last ten years, whichever is less, indicating the source of data and describing the method used to estimate the export loss;

(6) The level of TEA Participant contribution anticipated based on the requested level of TEA resources including the method by which the contributions would be generated, e.g. U.S. membership dues or assessments, certificate premiums and interest, etc.;

(7) A "Strategic Plan" which briefly describes by market: The overall strategy in the market, the plan's duration, the proposed budget and activities to be undertaken, who will conduct or supervise them, the manner and extent to which the proposed activities are expected to counter or offset the effects of the unfair foreign trade practice, and how the activities will be evaluated. Include information regarding the manner and extent to which U.S. industry and/or foreign third parties are expected to participate or contribute resources to the proposed program. Nonprofit organizations proposing to conduct brand promotion programs should refer to § 1485.18 regarding additional information required in TEA program applications related to proposed activities for promotion of specific brand commodities including the extent to which the requested allocation will be budgeted for brand promotion activities; and

(8) For nonprofit organizations, a description of the nonprofit organization, its membership, membership criteria, the organization's Articles of Incorporation and Internal Revenue Service (IRS) tax exempt identification number, and the identity

of any subsidiaries or parent organizations.

(c) *Authorized signature.* All applications for TEA or TEA/EIP program participation must bear the original signature of the Chief Executive Officer of the organization or a designee so authorized for that purpose in writing.

(d) *Submission.* Send applications to: Marketing Programs Division, room 4932-S, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250-1000.

(e) *Allocation Criteria.* (1) Agricultural commodities to be promoted under a TEA or TEA/EIP Program Agreement must be those, the exports of which, are adversely affected by the existence of a verifiable unfair trade practice. First consideration will be given to commodities with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974 or for which exports have been adversely affected by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974. Agricultural products whose composition is not at least 50 percent U.S. origin by weight and value will not be eligible for consideration.

(2) CCC will also review the following factors in its consideration of applications for TEA and TEA/EIP program participation:

(i) The extent to which the U.S. nonprofit organization represents the commodity being assisted, with first consideration given to those which are the broadest-based in membership and scope on an industry-wide or nationwide basis;

(ii) The organization's ability to provide a U.S.-based staff capable of developing, supervising and carrying out market development projects overseas and willingness and ability to contribute resources to the joint project. CCC will consider the extent and complexity of activities proposed in relation to each applicant organization's prior export market development experience and U.S.-based staff resources. Anticipated TEA Participant contributions to the administrative oversight and conduct of the projects proposed, as indicators of the organization's commitment and the adequacy of its administrative resources to plan, conduct and supervise the proposed program. CCC will also consider the willingness and ability of private organizations to back up promotional activities with aggressive selling and adequate supplies of agricultural commodities and products of the quality desired by foreign buyers.

(iii) The market potential for the agricultural commodities or brand products in the markets identified for promotional effort, conditions affecting the level of U.S. exports which could be influenced by the proposed activities and the likelihood of the proposed activities influencing those conditions;

(iv) To the extent the application requests TEA resources for the purposes of brand promotion, the propriety and prospects for success of such a strategy in terms of increasing exports of the U.S. agricultural commodity; and

(v) The adequacy of provisions for appropriate monitoring and evaluation of activities proposed within the strategic plan.

(f) *CCC Notification.* Written notification by the Administrator regarding approved allocations of TEA resources will separately identify amounts approved for the purposes of brand promotion.

§ 1485.5 TEA and TEA/EIP Activity Plans.

(a) *General.* An approved activity plan authorizes the expenditure of TEA resources available under a TEA or TEA/EIP program agreement. Activity plans must be prepared on an annual basis and identify the constraints to expanding or maintaining U.S. exports of specific agricultural commodities or brand products to each market area addressed by activities in the plan. The plan must also describe the proposed activities and anticipated expenditures, separately identifying those to be reimbursed with TEA resources and, in TEA Participant plans, those to be contributed by the TEA Participant, the U.S. industry, or a foreign third party. In the case of TEA/EIP plans, only eligible reimbursable expenses should be included, each of which may be partially reimbursed with TEA resources. Each activity in the TEA or TEA/EIP activity plan shall include goals and benchmarks against which the success of the activity will be measured and the methodology for its measurement. Identification of activity plans, activities, markets and budgets must conform to the coding system prescribed in the model activity plan referred to in paragraph (b) of this section. TEA Participants should also refer to § 1485.18 regarding information required to be provided regarding proposed brand promotion activities. Prior to preparation of the activity plan, TEA Participants should consult with the Commodity Programs Division Director and Attaches/Counselors in the respective activity countries regarding the constraints and proposed activities. Expenses incurred prior to the effective date of the activity plan in which the activity or expense is budgeted and

approved, or not in accordance with the activity plan, will not be eligible for reimbursement with TEA resources or for consideration as contributions.

(b) *Model activity plan.* Activity plans must adequately set forth the information identified in paragraph (a) of § 1485.5. CCC will not approve activity plans which do not provide at a minimum the information required by, and in the format and coding described in, a model activity plan, copies of which are available from the Commodity Programs Division Director.

(c) *Submission of activity plans.* In accordance with deadlines established annually by CCC, TEA Participants shall submit three copies of the activity plan to the appropriate Commodity Programs Division Director and a copy of the relevant sections to each Attache/Counselor responsible for the countries in which activities are proposed. TEA/EIP Participants shall submit activity plans with their application to participate in an announced TEA/EIP program in accordance with § 1485.19.

(d) *Changes to activity plans.* (1) Once an activity plan has been approved by CCC, the TEA or TEA/EIP Participant may request changes by submitting an activity plan amendment request (APAR). An APAR must be approved by CCC before any expenses authorized by the APAR are incurred.

(2) In order to be approved, the APAR must be submitted to the appropriate Commodity Programs Division Director with a copy to each Attache/Counselor responsible for the countries in which proposed activity or budget changes will occur. APAR's must adequately set forth the information identified in paragraph (a) of § 1485.5 in the format provided in a model APAR, copies of which are available from the Commodity Programs Division Director.

(e) *Approvals.* CCC will inform TEA and TEA/EIP Participants of approval or disapproval of activity plans or APAR's including any required changes therein.

§ 1485.6 TEA participant contributions.

(a) *General.* The extent to which a TEA Participant will be expected to make contributions of its own resources to the costs of the TEA program shall be specified in the letter approving the activity plan. If at any point in the program, the Participant has reason to believe that its actual contribution may be significantly less than specified, it must so notify the Commodity Programs Division Director as soon as possible. A significant decline in TEA Participant contributions may result in a reduction of TEA resources made available by CCC. To be eligible, contributions must

be directly related to an approved activity and be verifiable by audit.

(1) The TEA Participant annual contribution must be sufficient to provide adequate U.S.-based administrative support needed to plan, conduct, supervise and manage approved activities, but in no case less than five percent of the total TEA resources budgeted in the approved activity plan.

(2) TEA Participant contributions may include:

(i) Actual expenditures for travel and other expenses of U.S. TEA Participant personnel, industry representatives, consultants or members of trade teams to conduct, supervise or otherwise participate in approved TEA activities;

(ii) The cost of specific and directly-related TEA activities carried out by the TEA Participant's own staff when such activities (A) are necessary to the success of a TEA activity and, (B) would not otherwise be undertaken;

(iii) Direct expenditures such as transportation and shipping costs, the cost of generic samples, displays and promotional materials;

(iv) Generic advertising costs;

(v) Administrative support costs for TEA Participant U.S. and foreign offices to the extent the offices are responsible for the development, conduct or supervision of authorized TEA activities; and

(vi) Sales and trade relations expenditures;

(3) Contributions may not include:

(i) Benefits generated by U.S. or foreign groups or individuals, but for which the TEA Participant or third party Participant made no expenditure of funds. For example, the value of free publicity generated by TEA Participant activities is not an eligible contribution;

(ii) Cost of membership in clubs and organizations which are primarily socially oriented;

(iii) Salaries and other expenses of those attending social functions; or

(iv) Value of the time spent by those attending a TEA-supported conference, workshop, demonstration, or trade seminar;

§ 1485.7 Expenditures for which reimbursement may be claimed.

(a) *General.* In order to be eligible for reimbursement with TEA resources, expenditures must comply with the provisions of these regulations and be consistent with the laws and regulations of the country in which activities are being carried out.

(b) *Authorized uses.* TEA resources may be used to pay costs which are essential to, and clearly identifiable

with, the carrying out of activities in the TEA or TEA/EIP Participant's activity plans, or amendments thereto, approved by CCC. Activities shall relate to one of three types of strategies:

- (1) Technical Assistance—activities which address technical problems related to the sale, movement, processing, marketing or utilization of U.S. agricultural commodities.
- (2) Consumer Promotion Activities—activities which are designed to influence consumers by changing attitudes toward or making them aware of the advantages of utilizing U.S. agricultural commodities or brand products. Consumer promotion activities may also include brand promotions by U.S. or foreign private firms.
- (3) Trade Servicing Activities—activities designed to influence foreign traders, importers, wholesalers and retailers, as well as foreign government officials who are involved with the importation, distribution, and marketing of agricultural commodities.
- (c) *Uses not authorized.* TEA resources may not be used for:
 - (1) Payment of individual salaries of personnel of third party Participants;
 - (2) The cost of membership in clubs and professional organizations which are primarily socially oriented;
 - (3) Insurance on household goods and personal effects, including privately-owned automobiles, whether overseas or stored in the U.S., belonging to U.S. citizen employees;
 - (4) Payment of indemnity and fidelity bond costs;
 - (5) Prizes or awards in connection with contests or similar activities.
 - (6) Fees for credit cards;
 - (7) Participation fees for U.S. Government-sponsored activities, e.g., trade fairs, exhibits, etc.;
 - (8) Printing business cards;
 - (9) Purchasing and mailing seasonal greeting cards;
 - (10) Office parking fees;
 - (11) Token gift items;
 - (12) Refreshments for office staff and any related equipment;
 - (13) Subscriptions to and advertisements in TEA Participant-published periodicals, or subscriptions to other publications unless such other publications are used by foreign staff in support of authorized TEA activities or as a source of current information on market and economic conditions;
 - (14) The production, purchase, reproduction, modification, translation or rental of any market development film in excess of \$7,500; or
 - (15) The cost of the commodity used or product being promoted in demonstrations, samplings, feeding trials, or other TEA activities except

that TEA resources may be used to transport or prepare the commodity or product.

(d) *Timing.* (1) The period during which Participants may submit claims for reimbursement to CCC for expenses incurred against an approved activity plan budget will end six months after the conclusion of the activity plan year. Claims for reimbursement not received within that period will not be reimbursed with TEA resources but may be claimed as a TEA Participant contribution to the program.

(2) Activities must have been initiated during the period covered by an approved activity plan authorizing such activities.

(3) Goods or services contracted for in one year, must be received no more than 30 days into the subsequent activity plan year in order to have such expenses charged back to the previous year activity plan budget.

(4) Agreements supporting expenditures to be reimbursed must be in writing and detail the responsibilities and obligations of each party.

(e) *Responsibility.* TEA Participants must be able to document that the terms, conditions, and costs of contracts constitute an economical and effective use of TEA resources. TEA and TEA/EIP Participants have full and sole responsibility for the legal sufficiency of all contracts and assume financial liability for any costs or claims resulting from suits, challenges, or other disputes based on contracts entered into by the TEA or TEA/EIP Participant. Leases and contracts shall make no reference to CCC, any other agency of the Government or any of its personnel or programs.

§ 1485.8 TEA Participant Overseas Office Expenses and Related Matters.

(a) *General.* This section sets forth the procedures, documentation requirements, and approval criteria related to foreign office and related expenses for which reimbursement with TEA resources is claimed. Overseas office and related expenses will not be reimbursed in the TEA/EIP program.

(b) *Establishment of overseas office.* When a TEA Participant arranges to have an individual or organization manage an establishment which serves as a focal point for program administration, and/or trade servicing activities carried out in the TEA Participant's name, that establishment is considered a foreign office and it must be so identified and budgeted in the activity plan. Insofar as TEA resources are used to reimburse such costs, the salary costs of individuals representing the TEA Participant who staff such an

office will be subject to the limitations specified in § 1485.9. Any proposal to establish an overseas office in the activity plan must include the following information:

(1) How the new office will be used to better achieve project objectives;

(2) An itemized cost of establishing the office and cost division between the use of TEA resources and the use of TEA Participant funds; and

(3) Personnel requirements.

(c) *Real Property Leases.* (1) All lease arrangements supporting claims for reimbursement must be in writing.

(2) CCC will reimburse only the annual rent and operating costs of the office budgeted in the current approved activity plan. The Participant assumes sole financial liability for any forward year expense obligations including long term deposits, multiple year lease obligations, severance payments and other personnel costs.

(d) *Nonexpendable Project Property.*

(1) Nonexpendable property includes: Office or demonstration furniture, equipment, machinery, removable fixtures, draperies, blinds, floor coverings, decorations, computer software and articles of similar nature, other than ordinary office supplies, which are of a durable nature, have an expected service life of at least one year, and do not lose their identities by incorporation in other articles when put into use. When approved in the activity plan, TEA resources may be used to purchase or lease nonexpendable property reasonably needed to conduct TEA activities and to repair nonexpendable property purchased with TEA resources.

(2) Title to nonexpendable property purchased with TEA resources shall pass to the Participant at the time of purchase.

(3) Upon completion, curtailment or termination of TEA activities, or closing of an office having jurisdiction over the activity in which the property was used, title to property acquired wholly or partly with TEA resources shall pass to CCC unless otherwise approved by CCC.

(4) All nonexpendable property purchases must be within the budget approved for that purpose in the activity plan. Nonexpendable property with an equivalent value of \$100 or more must be included in the office's inventory. Such inventory should include and number each item purchased with TEA resources. Include for each item on the inventory: The date of purchase or acquisition, the item's cost or value as of that date, the item's make, model, electrical requirements, other identifying

or usage characteristics and serial number.

(5) The TEA Participant is responsible for safeguarding and insuring all nonexpendable property purchased with TEA resources, and protecting it from theft, damage and unauthorized use, whether or not the property is required to be inventoried.

(6) All lease arrangements for nonexpendable property must be in writing and not extend beyond the completion date of the activity plan unless the TEA Participant agrees to assume responsibility for the extended portion of the lease.

(7) TEA resources may not be used to purchase, lease (except while in authorized travel status), or repair motor vehicles.

(8) The TEA Participant must promptly report any loss, theft, or damage to property, to the insurance company in accordance with the policy.

(9) Property that is unusable, unserviceable, or no longer needed for project purposes may be disposed of in one of the following ways, and the TEA Participant must document the file with the reasons for the disposal method used.

(i) Exchange or sale. The TEA Participant must use any exchange allowance or sale proceeds toward the purchase of other property needed in the project or handle in accordance with the provisions of § 1485.16.

(ii) Transfer for program purposes. The TEA Participant may transfer property to other TEA activities, including another Participant.

(iii) If neither paragraphs (d)(9) (i) or (ii) of this section are possible, with Attache/Counselor approval, unneeded property may be donated to a local charity, disposed of as unusable, or physically transferred to the Attache/Counselor, along with any documents of title and a complete inventory of the transferred property.

§ 1485.9 TEA participant compensation levels for foreign national and U.S. citizen employees, staff consultants, and technical consultants.

(a) *General.* TEA resources may not be used to reimburse compensation costs for employees or consultants under a TEA program agreement in excess of the ceilings prescribed in this section. Such costs are not reimbursable under a TEA/EIP program agreement. The provisions of this section in no way preclude TEA Participants from compensating staff or consultants in greater amounts provided the excess is paid from their own resources. Amounts paid in excess of those provided herein may be claimed as eligible contributions

provided they otherwise meet the criteria prescribed in § 1485.6.

(b) Salary levels for U.S. citizen employees in approved foreign offices.

(1) When approved in an activity plan, TEA resources may be used to cover basic salary costs of U.S. citizen employees in foreign offices subject to a ceiling of the General Schedule Grade 14 (GS-14) Step 5 gross salary for U.S. Government employees in effect at the time the salary is earned. In addition, the TEA Participant may submit a claim for up to 25 percent over the actual salary to partially offset the cost of such allowances and benefits as that TEA Participant may choose to include in its contracts with the American employees serving overseas.

(2) The TEA Participant may continue to follow U.S. Government policies for its employees in specifying allowances and benefits, but it is not obligated to do so, and no accounting will be required for the additional payment up to 25 percent other than verification of the gross remuneration actually paid. CCC will not reimburse the TEA Participant directly for any allowances, including housing, utilities, tuition, storage, post differentials, or travel costs and transportation of household effects, or for benefits, other than those required by local law, such as insurance and retirement plans.

(c) *Salary levels for foreign national employees and fees for staff consultants in approved foreign offices.* (1) The use of TEA resources to pay the salary costs related to the employment of non-U.S. citizen employees and/or hiring of non-U.S. citizen staff consultants, is limited to the rates prescribed for similar or equivalent positions in the local U.S. Embassy Foreign Service National (FSN) Salary Plan. "Staff consultants" are those whose duties are full-time and/or otherwise function as members of the foreign office staff (as distinguished from "technical consultants" which are described below).

(2) In no case, except for the two situations described below, may reimbursement with TEA resources for a salary exceed the maximum prescribed for the top grade and step in the local U.S. Embassy FSN Salary Plan.

(3) The FSN Salary Plan may be exceeded for:

(i) Country Directors: working in countries in which the top grade and step of the local FSN Salary Plan does not adequately compensate the employee for his/her level of responsibility, expertise and scope of duties. In this case, the TEA Participant may create a "Supergrade I", equivalent to a grade increase over the existing top grade of the FSN Plan. To develop the

supergrade and its incremental step increases, the TEA Participant will calculate the percentage difference between the second-highest and the highest grade in the Plan and apply that percentage to each of the steps in the top grade; or

(ii) Regional Directors: Having responsibility for activities and/or offices in more than one country and otherwise meeting the criteria described above for Country Directors. The TEA Participant may create a "Supergrade II," calculated on the same basis as that for Supergrade I.

(d) Fees paid to technical consultants.

For the purposes of this subsection, a technical consultant, rather than being a member of the office staff, is contracted to conduct a specific approved activity and his/her fees are budgeted as part of the activity for which he/she is responsible in the activity plan with the expectation that such fees would be reduced were the activity to be canceled or significantly reduced. TEA resources may not be used to reimburse fees paid to a technical consultant in excess of the gross daily equivalent salary of a General Schedule Grade 15 (GS-15), Step 10 for U.S. Government employees in effect on the date the fee is earned.

(e) *Retroactive pay adjustments.* To the extent that TEA resources are available in the TEA agreement, CCC will approve of retroactive salary adjustments to conform with authorized changes in local Embassy FSN salary plans effective as of the date of such adjustment. To request CCC approval, TEA Participants shall submit an APAR to the Commodity Programs Division Director as soon as the changes take effect. Lump sum payments for retroactive pay increases should be charged to the budget for the activity plan year in which the salary increase was earned.

§ 1485.10 TEA participant employment of overseas personnel.

(a) *General.* The provisions of this section apply to all TEA Participant personnel (U.S. citizen or foreign national) whose salaries are paid in any part from TEA resources. Such personnel are not employees or contractors of CCC. The TEA Participant has sole responsibility for ensuring that all employment terms, conditions, and related documents conform to local law and custom and, further, assumes sole financial liability for any costs or other claims resulting from suits, challenges, or other disputes based on such employment, understandings, or related documents.

(b) *Documentation requirements.* The TEA Participant must retain all employment related documents (including, for each employee: The employment application, all subsequent contracts, position descriptions, leave records, salary history, etc.) in the TEA Participant's office personnel files.

(c) *Establishing staffing patterns, salary levels and compensation plans.* The staffing pattern and all related approved personnel costs must be in accordance with those specified in the activity plan. To hire or promote an employee for a position other than those described in the staffing pattern of the activity plan requires an amendment to the activity plan.

(d) *Recruitment and employment of personnel.* (1) Conditions of employment for all employees shall be compatible with the laws governing private employment in the host country. TEA resources may be used to pay employment agency fees but not travel expenses.

(2) A TEA Participant must hire all employees under written contracts.

(3) The TEA Participant must report to the Attaché/Counselor and, through the TEA Participant's U.S. Office, to the Commodity Program Director any improper or irregular actions on the part of any employee. An "improper or irregular action" is any activity that is illegal, dishonest, conflicting in interest, or otherwise of potential embarrassment to the U.S. Government.

(4) TEA resources may be used to cover the cost of legal advice regarding labor laws in the host country provided the TEA Participant first consults with the local Attaché/Counselor before hiring a local attorney.

(5) Unless otherwise prohibited by local law, employment contracts must include a statement in the contract of any full-time employee that the employee should avoid the possibility or the appearance of conflict of interest by adhering to the following rules of conduct. A TEA Participant employee or staff consultant should not:

(i) Engage in any outside employment whether on his own behalf, or for private individuals, firms, companies, institutions, or local governments which is not compatible with the full and proper discharge of the duties and responsibilities of his employment with the TEA Participant, or without prior notification to the TEA Participant;

(ii) Have a direct or indirect financial interest in any organization that could benefit as a result of TEA Participant association;

(iii) Use TEA resources to employ, contract with, purchase services or materials from, or in any other way

conduct business with family members which could be construed as nepotism or otherwise represent a conflict of interest.

(6) Salaries must be stipulated in terms of the local currency for a foreign national and in terms of U.S. dollars for a U.S. citizen assigned abroad.

(7) The TEA Participant assumes sole liability for any forward year financial obligations, such as severance payment, attributable to the employment of foreign nationals.

(e) *Office management.* (1) The TEA Participant must observe local law pertaining to the payment of health insurance, accident insurance, and other benefits for foreign national employees required to be paid by employers for private industry employees in similar positions. Such payments pursuant to local law may be reimbursed with TEA resources.

(2) Subject to local law, the TEA Participant must conform office hours, holidays, and the work week to those generally observed by U.S. firms in the local business community.

(3) The TEA Participant must maintain an auditable system of leave and leave records and no payment to an employee for accrued annual leave will be reimbursed except at the time the employee is being terminated or when required by law.

(4) TEA resources may be used to reimburse paid overtime for foreign national clerical staff if the workload requires, and if the authorization for overtime is documented.

(5) Salary Advances may not be reimbursed with TEA resources.

(f) *Insurance.* TEA resources may be used to reimburse premium costs for the following required types of insurance:

(1) Insurance on nonexpendable property purchased with TEA resources; and

(2) Accident liability insurance covering premises leased with TEA resources, facilities used jointly with Third Party Participants in conducting TEA activities, appropriate insurance to protect employers in countries where they are held liable by local law for expenses from accidents to employees to the extent the employees are paid with TEA resources, travel insurance for non-TEA Participant personnel provided the travel of the personnel is authorized in the activity plan and paid for with TEA resources.

§ 1485.11 TEA Participant Travel Expenses.

(a) *General.* TEA resources may be used to reimburse necessary costs of international travel and domestic travel within foreign countries when

specifically approved in a TEA Participant activity plan. Travel costs are not reimbursable under a TEA/EIP program agreement. Travel must be made in accordance with the U.S. Travel Regulations (41 CFR parts 301, 302, 303, and 304) as may be amended from time to time. Travel must conform to the requirements of the "Fly America Act". TEA resources may be used to reimburse expenses incurred to obtain passports, visas, and inoculations.

(b) *Notification of attaché/counselor.* The TEA Participant must notify the Attaché/Counselor in the destination countries in advance of any proposed travel.

(c) *Living expenses.* Reimbursement for living expenses while in travel status shall be computed in accordance with the U.S. Federal Travel Regulations.

(d) *Automobile mileage.* Reimbursement for authorized use of a privately owned automobile for project business will be at a fixed rate per mile as determined by the local U.S. Embassy.

§ 1485.12 TEA participant reports.

Each TEA Participant is required to submit the reports specified below to the appropriate Commodity Programs Division Director. All reports must be in English and must include the TEA Program Agreement number, the countries covered, date of the report and period covered, the signature of the reporting employee or officer and a covering letter identifying the report.

(a) *End-of-year TEA participant contribution report.* Within three months of the completion of the activity plan year, the TEA Participant must submit to the Commodity Programs Division Director two copies of a report which separately identifies by "TEA Participant," "U.S. Industry" and "Foreign Third Party" the contributions made by each in U.S. dollar equivalents for the activity plan year just completed. The report must include substantially the same information and be in the format provided in the Model End-of-Year Report, copies of which are available from the Commodity Programs Division Director.

(b) *Trip reports.* Trip reports are required when TEA resources are used to reimburse transportation costs (other than local travel), or living expenses or per diem while in travel (local or international) status. One copy must be submitted within 45 days of completion of travel to the appropriate Commodity Programs Division Director and one copy submitted to the Attaché/Counselor in each country visited. The report shall include name of traveler(s),

purpose of travel, itinerary, names and affiliations of principal persons contacted and a brief summary of findings, conclusions or specific accomplishments.

(c) *Research reports.* All activities designated as research in the activity plan must result in a written report of findings. Any research paid for in any part with TEA resources is the property of the U.S. Government. Provide one copy of any such research to the Commodity Programs Division Director and one copy to the Attaché/Counselor responsible for the markets covered in the report.

(d) *Special reports.* CCC may require additional information or reports from time to time.

§ 148.13 TEA Participant evaluation.

(a) *Policy.* CCC requires evaluation of TEA and TEA/EIP Participant program activities for use in determining whether those activities should be continued, changed or terminated, and upon their completion, for use in planning future market development activities. The TEA or TEA/EIP Participant has primary responsibility for providing information required for Status Reviews, and for conducting or arranging for Activity Evaluations, as approved by CCC in the TEA or TEA/EIP activity plan.

(b) *Types of evaluation.* (1) Status Review: A documented, periodic review of activities carried out during the conduct of a TEA program to enable the Participant and CCC to monitor activities and identify aspects of program design and administration which may need adjustment in order to improve cost-effectiveness or program impact. Status Review information requirements and schedule will be described in the CCC's activity plan approval letter.

(2) Activity Evaluation: An evaluation carried out upon completion of a group of activities, a single activity, or upon completion of a defined stage of an extended activity, to determine the degree to which the activity or activities have met or are meeting their particular goals, as defined in the activity plan. The costs of all such evaluations shall be budgeted in a separate "Evaluation" activity in the same activity plan. If the TEA or TEA/EIP Participant proposes that particular activities not be subject to formal evaluation, the activity plan must explain why such evaluation is deemed impractical or unnecessary. CCC activity plan approval is conditioned upon the TEA or TEA/EIP Participant's agreement to the scope and scheduling of evaluations that are described in the activity plan approval letter. The evaluation may be directed

toward specific activity goals, or it may measure directly the impact of an activity or group of activities on the constraint to which they were addressed.

(c) *Outside evaluations.* If a TEA or TEA/EIP Participant intends to arrange for an evaluation to be conducted by an outside party to establish activity evaluation benchmarks, to complete final activity evaluations, or to undertake other aspects of evaluation, general selection criteria (e.g. background and qualifications), planned expenditures must be described in the activity plan narrative of the activity to be evaluated. Evaluations conducted by outside parties shall include, at a minimum:

(1) An Executive Summary which identifies the party conducting the evaluations and the activity or activities being evaluated (including activity plan and activity code) and briefly describes the activity including information on timing and target audience; a concise statement of the constraint(s) defined in the activity plan which the activity or activities were designed to alleviate, along with the goals/benchmarks for success identified in the plan; a description of the evaluation methodology; findings focusing particularly on the activity's progress in meeting the goals and benchmarks identified in the plan as well as strengths and weaknesses in the conduct of the activity; extenuating factors which may have influenced either the conduct of the activity or the outcome of the evaluation; and recommendations for ongoing programs.

(2) A cover letter, prepared by the TEA or TEA/EIP Participant as an attachment to the Executive Summary of the evaluation, which details the TEA or TEA/EIP Participant's agreement or disagreement with each of the evaluation's findings and recommendations, plans for future programs, and changes derived from the evaluation.

(d) *In-house evaluations.* If CCC's letter approving the activity plan calls for evaluation of an activity by the TEA or TEA/EIP Participant or the TEA or TEA/EIP Participant's agent, contractor, or other representative, then the TEA or TEA/EIP Participant must submit a brief report covering the same information as that required above for an outside evaluation's "Executive Summary," except that the "Recommendations" section should provide the TEA or TEA/EIP Participant's own conclusions about what the evaluation suggests for ongoing or future program planning.

§ 148.14 TEA Resources financial management, accounting and records.

(a) *General.* This section covers the financial administration of TEA and TEA/EIP program activities. It includes procedures to account for expenditures and contributions made under TEA and TEA/EIP program agreements and in accordance with approved annual activity plans. Unless otherwise specified, all instructions and procedures described herein are the responsibility of the TEA or TEA/EIP Participant U.S. Office. The TEA or TEA/EIP Participant is responsible for instituting a financial management and accounting system for TEA resources and contributions which ensures accurate, current and complete documentation and disclosure of all financial transactions for each activity approved in an annual activity plan or subsequent amendments and ensuring that TEA resources and property assets are used only for authorized purposes.

(b) *Budgets.* Annual activity plans and amendments thereto, approved by CCC provide the authorities and limitations for Participants to make expenditures under TEA and TEA/EIP program agreements.

(c) *Authorized signatures.* The Chief Executive Officer (CEO) of the TEA or TEA/EIP, Participant U.S. Office, or his designee, will sign the TEA or TEA/EIP program agreement on behalf of the TEA or TEA/EIP Participant and a signature card which designates which TEA or TEA/EIP Participant officials are authorized to sign program agreements, reimbursement claims and advance requests. Two of the signatures authorized for that purpose on the signature card are required on every advance request or reimbursement claim. The TEA or TEA/EIP Participant is responsible for immediately notifying the Marketing Programs Division Director of any changes in eligible signatories and updating the card as needed.

(d) *TEA and TEA/EIP program records.* (1) The TEA or TEA/EIP Participant shall maintain appropriate records and documents of activities for not less than three calendar years after completion or termination of the TEA or TEA/EIP program agreement or not more than five full calendar years following the year the transaction that is evidenced by such an account or record took place, whichever is sooner. All records and accounts of TEA or TEA/EIP program activities, contributions and expenses shall be available for inspection or audit by Government authorities at any reasonable time.

(2) The TEA or TEA/EIP Participant shall include in all agreements with third party Participants which support claimed contributions provisions that make records and accounts available to the TEA or TEA/EIP Participant, or its authorized representative, for inspection and audit.

(3) The TEA or TEA/EIP Participant shall maintain records which provide, for each expense reimbursed with TEA resources or claimed as a contribution, the activity plan code, country, activity number and cost code approved by CCC in the activity plan and to which the expense should be charged. Code designations may be obtained from the Commodity Programs Division Director. These records should include:

(i) The receipts for each expenditure of TEA resources in excess of \$25.00. Receipts for sales and trade related expenses (actual vendor invoices or restaurant checks, rather than credit card receipts) must be kept regardless of the cost;

(ii) The exchange rate used to calculate the dollar equivalent of expenses paid in foreign currency;

(iii) The unexpended balance of each budgeted amount;

(iv) Claims against the TEA resources by submission of reimbursement claims to CCC;

(v) An itemized list of all claims charged to each of the TEA or TEA/EIP Participant's TEA resource accounts; and

(vi) Documentation supporting each financial transaction, which may include but not necessarily be limited to: canceled checks, paid bills, receipts, contracts or purchase orders, per diem calculations and travel voucher claims. Documentation to support TEA/EIP claims for reimbursement must document each of the eligible of the direct promotional expense paid by the TEA/EIP Participant, half of which was reimbursed with TEA resources. Include in the supporting documentation for each financial transaction, as appropriate: The annual activity plan code; the activity code number(s); cost code(s); country(ies); sufficient English translation to identify the expense; and cross references for all accounting records and supporting documentation.

(4) Documentation supporting contributions claimed by TEA Participants must include: the dates, purpose and location of the activity to which the cash or in-kind items were contributed, by whom the activity was conducted, the identities of participating groups or individuals, and the method of computing the claimed contributions. TEA Participants must retain and make available for audit the following types of

documentation related to claimed contributions:

(i) The written agreement (or memo to the files documenting the oral agreement) between the TEA Participant and the individual or group making the contribution; and

(ii) If available, copies of invoices or receipts for expenses paid by U.S. industry groups or individuals or foreign third parties and not reimbursed by the TEA Participant; or

(iii) If invoices are not available, an itemized statement from the individual or group making the contribution as to what costs it incurred pursuant to the joint activity; or

(iv) If neither of the foregoing is available, a statement from the individual or group making the contribution as to what goods and services it provided; or

(v) If (ii) through (iv) above are not available, a memo to the files of the TEA Participant's own estimate of what contributions were made by the group or individual, item by item, the method used to assign a value to each, and the reason(s) that the documentation in (ii) through (iv) could not be obtained.

(e) *Proceeds.* Participation fees, sales proceeds, or any other proceeds generated by a TEA or TEA/EIP Participant activity, the costs of which were reimbursed in any part with TEA resources, must be used to offset the authorized expenses of the activity or must be returned to CCC. They may not be transferred to another activity or otherwise absorbed into the Participant's budget. This requirement does not pertain to premiums, interest or other income generated by liquidation of CCC commodity certificates.

(f) *Audit procedures.* The TEA or TEA/EIP Participant must establish adequate internal procedures to resolve audit findings and recommendations made in reports by internal, independent, and Government auditors and examiners. If the system provides for periodic audits by independent public accountants, a copy of those reports must be provided to the FAS Compliance Review Staff upon request.

§ 1485.15 TEA resource reimbursement claims and advance requests.

(a) *Responsibilities.* The TEA or TEA/EIP Participant is responsible for the proper examination of each reimbursement claim sent to CCC and for instituting whatever controls and safeguards are necessary to ensure that the claims represent proper and reasonable charges against TEA resources authorized in the TEA or TEA/EIP program agreement and the activity plan (or any subsequent

amendments thereto), and that transactions were in compliance with applicable regulations.

(b) *Reimbursement claims.* (1) Reimbursement may not be claimed for reimbursable deposits or for advances made to contractors or travelers until the service or materials have been received or the travel completed and the advance settled.

(2) Claims must not include amounts previously billed.

(3) Claims must be accurately categorized and coded and adequately supported by source documentation.

(4) The TEA or TEA/EIP Participant will forward to CCC the originals or copies of documents supporting reimbursement claims only when specifically requested.

(5) If an overpayment or incorrect claims is made, the TEA or TEA/EIP Participant is responsible for reimbursing CCC.

(c) *Advance payments to TEA Participants.* Advances will not be authorized under TEA/EIP program agreements. (1) The TEA Participant may request in writing, and CCC may authorize, an advance payment, to be issued in a single payment or in increments throughout the activity plan year the cumulative total of which will not exceed 40 percent of the U.S. dollar amount approved in writing by CCC in the Participant's annual activity plan, excluding amounts budgeted for brand promotions.

(2) The request must specify the amount of advance and certify that the TEA Participant will fully expend the advance within 90 days of issuance of the commodity certificate(s). The advance request and certification must bear the original signatures of two of the TEA Participant signatories authorized for that purpose on the signature card.

(3) Unless otherwise approved in writing by CCC, the request must be accompanied by acceptable security sufficient to cover the amount of the advance requested. The cost of the security, if required, is not reimbursable.

(4) Prior to reimbursing any subsequent expense claims received from the TEA Participant, CCC will first offset any expense claims for an activity plan year against any advance to the TEA Participant made in the same activity plan year that is outstanding on the date of receipt of the expense claim. That is, if an advance is outstanding against the current year activity plan, CCC will apply any expense claims against that plan to offset that advance and reimburse only the difference once the advance is fully offset. However, claims received for a prior or

subsequent activity plan year, against which no advance is outstanding, would be fully reimbursed. TEA Participants may use this optional advance to assist in the management of their cash flow, interspersing advances as needed with reimbursement claims.

(5) If the TEA Participant does not fully expend the advance on activities authorized in the activity plan for which the advance was given, within 90 days of issuance of the advance, it must return the unexpended dollar amount of the advance, plus a pro rata share of any proceeds generated by the advance, including premiums generated by certificates or interest earned on certificate proceeds or CCC funds.

(6) CCC will authorize no further advances for subsequent activity plan years as long as an advance remains outstanding against a prior year activity plan. Prior year advances may be accounted for by:

(i) Offsetting the advance by submitting expense claims of equivalent dollar value for activities authorized in the activity plan for which the advance was given; or

(ii) Refunding to CCC the balance of the advance not offset plus a prorata share of all proceeds generated by the advance.

(7) Refund dollar amounts due to CCC by mailing a check, payable to the Commodity Credit Corporation to: Marketing Programs Division, room 4932-S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250-1000.

(d) *TEA and TEA/EIP requests for reimbursement.* Each claim for reimbursement should total no less than \$10,000 (except the final claim submitted for the activity year, which may total less). The TEA or TEA/EIP Participant's U.S. Office requests reimbursement for authorized activity expenses by including them in a Reimbursement Claim submitted to the Marketing Programs Division, which will contain, as a minimum, the following:

(1) A sequential number assigned by the TEA or TEA/EIP Participant to each claim in the chronological order in which it is submitted;

(2) The name of the TEA or TEA/EIP Participant and TEA or TEA/EIP program agreement number;

(3) A summary of expenses claimed listed under the following columns;

(i) Annual Activity Plan code number. Expenses from different activity plan years may not be included in the same claim;

(ii) Region Code (for Regional activity);

(iii) Country Code;

(iv) Activity Number;

(v) Cost Code;

(vi) Dollar amount being claimed per cost code;

(vii) The following certification statement bearing the original signatures of two of the TEA or TEA/EIP Participant U.S. Office officials who have been authorized for that purpose on the signature card previously submitted to CCC must appear on the claim:

We certify that the expenses for which reimbursement is being claimed above were for authorized activities only and that they are supported by invoices and detailed records available for inspection and audit. We further certify that the above expenses were incurred pursuant to CCC approved activity plans and that expenses later found to be unauthorized, unreasonable or otherwise in conflict with the TEA (or TEA/EIP) Program Agreement, TEA regulations or other relevant regulations, and the activity plan will be repaid to CCC, by (TEA or TEA/EIP Participant Name) for which we, the undersigned, are duly authorized to make this certification.

; and

(viii) The exact name of the TEA or TEA/EIP Participant as it should appear on the CCC dollar check or generic commodity certificate and the address of the TEA or TEA/EIP Participant U.S. Office to which the certificate is to be mailed. CCC will issue checks or certificates only in name of the TEA or TEA/EIP Participant organization as it appears in the TEA or TEA/EIP program agreement.

(4) If any of the amounts shown on the reimbursement claim represent reimbursements to CCC pursuant to Compliance Report findings, footnote the reimbursement and cite the Report in which the finding was contained.

(5) The TEA or TEA/EIP Participant is solely liable for the accuracy and propriety of all claims and shall reimburse CCC in U.S. dollars for any amount subsequently disallowed.

(6) Expenses will be charged to the oldest available unexpended TEA account in the TEA or TEA/EIP Participant's agreement without regard to the activity plan in which the expenses were authorized.

(7) The U.S. dollar value shown on the face of the commodity certificate(s) will determine the value of the reimbursement to the TEA or TEA/EIP Participant without regard to its net value when it is subsequently liquidated by the Participant.

(8) CCC will periodically distribute reports to the TEA or TEA/EIP Participant which detail the balances of the TEA accounts in each TEA or TEA/EIP Participant's agreement and

approved activity plans. TEA and TEA/EIP Participants should use these reports to reconcile their own records and report any discrepancies as soon as possible to Commodity Programs Division Director.

§ 1485.16 Expired or terminated TEA resources.

(a) Balances of TEA program resources provided in the TEA or TEA/EIP program agreement, but not expended on activities by the date on which they expire for obligational purposes stated in the agreement, will revert to CCC.

(b) Within 90 days after the termination or expiration of a TEA or TEA/EIP program agreement, the TEA or TEA/EIP Participant must submit to CCC a final reimbursement claim which includes a certification that all reimbursement claims for expenses incurred under the TEA program have been submitted to CCC and that no further claims for any type of reimbursement will be made, the End-of-Year Report required in § 1485.12, and any other reports or evaluations required by this part 1485 or the approved activity plan.

§ 1485.17 Compliance review.

(a) *Records accessibility.* All TEA or TEA/EIP Participant records pertinent to TEA or TEA/EIP program agreements, activity plans, reimbursement claims and contributions shall be accessible to the FAS Compliance Review Staff (CRS); Office of the Inspector General, USDA; and the General Accounting Office, or any of their duly authorized representatives, to make audits, examinations, excerpts and transcripts.

(b) *Reimbursement to CCC pursuant to compliance report findings.* If CCC has reimbursed a TEA or TEA/EIP Participant or offset all or part of an advance payment with expense claims submitted by a TEA Participant which are later determined to represent unauthorized expenditures, the TEA or TEA/EIP Participant may reimburse CCC for unauthorized or disallowed expenses in one of two ways:

(1) By including the repayment to CCC as a negative amount against the appropriate codes to which the expense was originally charged on the next claim for reimbursement. This procedure has the dual effect of reaccrediting the disallowed amount to the unexpended budget balance of the activity originally charged plus repaying CCC by deducting the amount from the total reimbursement due to the TEA or TEA/EIP Participant for the claim on which

the repayment is shown. (The total reimbursement due to the TEA or TEA/EIP Participant on the claim cannot be less than zero. That is, the amount paid back to CCC cannot exceed the amount of reimbursement being claimed from CCC for other expenses).

(2) By issuing a check, made payable to the "Commodity Credit Corporation", for the amount due. Attach a report which shows the reimbursements to CCC as negative amounts against the appropriate codes to which the expense was originally charged. Limit the items on the report only to those covered by the check. Mail check and expense claims to: Marketing Programs Division, room 4932-S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250-1000.

(3) Whether reimbursement to CCC is accomplished by check or by deducting the amount due from a reimbursement request, include a notation that the amount being reimbursed to CCC is pursuant to a specifically identified CRS report.

§ 1485.18 Brand promotions administered by TEA participants.

(a) *General.* This section applies to brand promotion activities conducted by U.S. private and foreign firms (hereafter referred to as "Brand Participants") under the auspices of nonprofit organizations or regional state groups that have TEA Program agreements with CCC. This section does not apply to TEA/EIP Agreements with CCC.

(b) *Application procedure.* Funds for brand promotion activities may be requested by nonprofit trade associations or regional state groups as a part of the regular application process for TEA resources. All firms applying for TEA resources through such associations or groups must submit details as described in § 1485.4 to those associations or groups to be included in their TEA applications to CCC.

(c) *Application content to request TEA resources for the purposes of administering a brand promotion program.* Plans and requested budgets for brand promotion programs must be briefly outlined in the strategic plan portion of an application for TEA resources. The strategic plan must: Identify to what extent the program will be limited to U.S. firms or available to foreign firms and any differences, if any, in the conduct of the two programs; the TEA Participant's allocation criteria and procedures for distributing funds to individual firms; the method which will be used for announcing the availability of the program to the U.S. and/or foreign industry; the information which will be

solicited in the application; the provisions for evaluating branded promotions, and any other details the TEA Participant considers relevant.

(d) *CCC notification.* If CCC approves an allocation for a TEA Participant, the approval will specify the portion, if any, approved for branded promotion.

(e) *Procedures for distribution of TEA resources for brand promotions by TEA participants.* (1) TEA Participants must develop criteria for distributing TEA resources among Brand Participants which are defensible in terms of the overall goals of the TEA Participant's worldwide promotional program, and able to be objectively applied. TEA Participants may develop separate criteria for foreign firms. The distribution procedures and criteria must be approved by CCC and included in the announcement of the program's availability. The criteria for each brand promotion program must be uniformly applied to all applicants and ensure that the products are eligible for promotion under the TEA program with regard to U.S. content.

(2) TEA Participants may not limit participation to companies which are members of their organization. The availability of the branded TEA promotion program must be announced as broadly as possible throughout the participant's industry or, in the case of regional state group Participants, throughout the region. TEA Participants must document for the file the methods by which the program's availability was publicized.

(3) The information described in paragraphs (e)(3) (i) through (v) of this section must be included in the activity plan or APAR submitted by the TEA Participant to CCC requesting approval of each Brand Participant's program and its submission should therefore be included as an application requirement from private companies applying to participate in TEA Participant brand promotion programs.

(i) The name and address of the Brand Participant and the name(s) and address(es) of any current importer(s) in each market for which TEA resources are being requested;

(ii) The brand names of the products to be promoted, their composition and the extent to which their composition is U.S. origin by weight and value. All product labels, promotional material and advertising must identify the origin of the product as "U.S.", "U.S.A.", or the State of origin. If specifically approved by CCC, a recognizable U.S. regional designation may be used;

(iii) If the Brand Participant does not own the brand, a written assignment of

exclusive representation rights from the entity owning rights to the brand;

(iv) A description of any state or Federal agency from which the Brand Participant anticipates receiving funds for the same or similar purposes during the same period, or to which expenses are reported pursuant to any other program; and

(v) A plan for each market where funds are requested which includes, in addition to the information and format required in § 1485.5, current and projected sales data that can be used to measure the effectiveness of any TEA resources that are used for brand promotions.

(f) *Agreements between TEA participants and brand participants.* Once the activity has been approved by CCC, the TEA Participant must enter into an agreement with each approved Brand Participant which:

(1) Identifies the beginning and ending dates of the brand promotion period. All agreements between the TEA Participant and Brand Participants, and all expenditures for brand promotions, must fall within the TEA Participant's own activity plan period approved by CCC (e.g. if the TEA Participant's plan period is the Fiscal Year, an agreement signed as of October 1 could run 12 months until the following September 30, but an agreement signed on January 1 could run for only nine months until the following September 30);

(2) Makes no reference to possible extensions or renewability;

(3) Limits eligible reimbursable costs to those items and markets approved in the activity plan;

(4) Describes documentation requirements, the percentage of promotion expenses that will be reimbursed and reimbursement procedures;

(5) Includes written assurance that Brand Participants either own the brand of the products that they will be promoting under the TEA program or have a sole agency agreement with the owner of the brand for each of the markets in which TEA resources will be used; and

(6) Includes a requirement that all product labels, promotional material and advertising identify the origin of the product as "U.S.", "U.S.A.", the State of origin or other recognizable U.S. regional designation specifically approved by CCC;

(g) *Redistribution of brand promotion funds among U.S. firms.* Once brand promotion funds have been distributed among U.S. brand participants, TEA Participants may not redistribute previously distributed but unexpended

branded promotion funds without following all of the foregoing steps. This prohibition is intended to ensure that all private U.S. firms have an equal opportunity to participate on the same or equitable terms and conditions. Any such reallocation would require prior CCC approval.

(h) *Brand promotion program operations.* (1) The use of TEA resources to reimburse authorized expenses of Brand Participants is limited to no more than 50 percent of each eligible direct promotional expense. Expenses must have been incurred during the period of the contract between the Brand Participant and the TEA Participant. For the purposes of this section the date on which an expense is "incurred" is the date on which the good or service, for which the Brand Participant or foreign third party made payment, was provided, not the date on which payment was made. "Direct promotional expenses" as described and approved by CCC in the activity plan include advertising, merchandising, public relations, and shows and exhibits.

(2) *Foreign third party expenses.* TEA resources may be used to reimburse eligible brand promotion costs incurred by a foreign third party provided they were incurred pursuant to a written agreement between the foreign third party and the Brand Participant. Expenses incurred by foreign third parties must be separately identified as such in the claim submitted to the TEA Participant. To the extent they are reimbursed with TEA resources, the reimbursement must be passed through to the third party. In no case may a Brand Participant retain reimbursement which exceeds the percentage of reimbursement of its eligible costs specified in the agreement with the TEA Participant.

(3) *Ineligible promotional expenses.* The following expenses may not be the basis for any TEA reimbursement in brand promotion programs. To the extent that any of these costs may be included in a subcontract, they must be separately identified and deducted from those submitted as the basis for reimbursement with TEA resources:

- (i) All salaries, living expenses and office costs, allowances or related expenses;
- (ii) All costs of travel or per diem;
- (iii) Cost of product samples;
- (iv) Selling costs including slotting fees, packaging and package design;
- (v) Giveaways, awards, and prizes;
- (vi) The redemption value of coupon or other "price off" deals;
- (vii) Sales and Trade Related Expenses such as meals, receptions, refreshments, entertainment and gifts;

(viii) Capital expenditures, such as those associated with permanent displays;

(ix) Market research;

(x) Product development costs;

(xi) Participation Fees or charges for U.S. Government-sponsored trade fairs and exhibits; or

(xii) Consultant fees.

§ 1485.19 TEA/Export Incentive Program (TEA/EIP) Agreements—Special Provisions.

(a) *Consideration of TEA/EIP programs.* TEA/EIP Agreements will be entered into by CCC only if: (1) It is determined that such agreements with private firms could counter or offset the effects of foreign unfair trade practices by contributing to the effective creation, expansion, or maintenance of markets for the affected commodities in foreign markets;

(2) No appropriate nonprofit association is available through which to conduct the brand promotion program; and

(3) There is sufficient U.S. industry interest.

(b) *Private firm application procedures for an announced TEA/EIP program.* Once an allocation has been approved for a TEA/EIP Program, CCC prepares an announcement to the U.S. industry which describes the program, eligibility criteria and application procedures. Any U.S. firm, including the firm whose request for a TEA allocation was the basis for a TEA/EIP program, must separately apply for participation in the subsequently announced program and will be subject to the same application procedures and allocation criteria as all other eligible private U.S. firms. Interested U.S. private firms apply to participate in the announced TEA/EIP program by submitting completed applications to CCC which include:

(1) Name and address of the applicant firm;

(2) Brand names of the products to be promoted, their composition and the extent to which their composition is U.S. origin by weight and value. All product labels, promotional material and advertising must identify the origin of the product as "U.S.", "U.S.A." or the state of origin. If specifically approved by CCC, a recognizable U.S. regional designation may be used;

(3) If the applicant does not own the brand, the applicant must submit a written assignment of exclusive representation rights from the entity owning rights to the brand;

(4) A description of any state or Federal agency from which it anticipates receiving funds for the same or similar purposes during the same period, or to

which expenses are reported pursuant to any other program; and

(5) For each market in which funds are requested, an activity plan containing the information in the format specified in 1485.5 and current and projected sales data that can be used to measure the effectiveness of any TEA resources that are used for that TEA/EIP program;

(c) *Consideration of projects.*

Applications for specific TEA/EIP programs will be reviewed in relation to market conditions in the countries where activities are proposed, the prospects for success, and in relation to the proposing firm's prior experience in conducting market promotion activities abroad and exporting.

(d) *TEA/EIP program agreements and budgets.* CCC's written approval of the activity plan and other information included in the TEA/EIP Participant's application for TEA/EIP Program participation, shall constitute the TEA/EIP Participant's authority to incur expenses eligible to be reimbursed with TEA resources. The CCC approval letter will specify the activity year period, the level of resources available to reimburse expenses incurred during that year, and any restrictions or changes to the submitted application regarding proposed activities and/or markets.

(e) *Eligible costs and reimbursement procedures.* Eligible promotional expenses, exclusions, requirements and reimbursement rates and procedures shall those described in § 1485.18 and as described and budgeted in the activity plan approved by CCC.

§ 1485.20 Program Participation and Benefits.

(a) This section establishes requirements applicable only to participation in TEA Program Agreements and any other agreement with CCC that specifically incorporates the provisions of this part, but is not applicable to participation in TEA/EIP agreements.

(b) *General.* It is the policy of CCC to insure that the benefits generated by agreements for the development of foreign markets for United States agricultural commodities are as broadly distributed throughout the relevant agricultural sector as feasible and, particularly, that no program participant derives an unfair advantage or benefit from activities conducted pursuant to the agreement, whether funded with CCC assets or industry contributions.

(c) *Industry participation.* When required by CCC, TEA Program Participants entering into a TEA Program Agreement shall promptly furnish to CCC for approval its criteria

for the selection of U.S. agricultural industry representatives to participate in activities conducted pursuant to the Agreement, such as trade teams, sales teams, and trade fairs, and its criteria for the selection of firms to participate in U.S. brand-identified promotions. Such criteria must ensure participation on an equitable basis by a representative cross section of the relevant U.S. agricultural industry. If CCC requests submission of criteria for approval, the TEA Program Participant shall not make any selections using criteria disapproved by CCC after the TEA Program Participant has been notified of CCC's disapproval.

(d) *Distribution of information.* All TEA Program Participants shall provide, on a timely basis, upon request of any entity in the United States, other than a representative of a foreign government, any and all data developed and produced with CCC assets or funds of the program participant contributed under the terms of the agreement with CCC. Any fee charged in connection therewith may not exceed the costs incurred in assembling, duplicating and distributing the requested material.

(e) *Export activities and related services.* (1) Neither TEA Program Participants nor affiliated organizations shall, during the term of the agreement, make export sales of agricultural commodities of the kind which are promoted, in whole or in part, by use of CCC assets.

(2) Neither TEA Program Participants nor affiliated organizations may assess fees for services provided to exporters in facilitating an export sale if the promotional activities intended to directly result in that specific export sale are supported, in whole or in part, by CCC assets. This paragraph applies to activities such as those involving discussions with potential buyers or the solicitation of specific sales including activities performed by sales teams and performed through trade fairs rather than activities of a more general promotional nature. This paragraph does not apply to checkoffs or membership dues based on commodity sales when such assessments are a condition of membership in the participating organization.

(3) Participants in approved program activities shall not use the activities to promote private self-interests or conduct private business, except as members of sales teams or as part of a U.S. brand-identified promotion when such activities are specifically approved by CCC.

§ 1485.21 Compliance with program requirements.

(a) CCC may, from time to time, require TEA Program Participants submit certifications for purposes of this part as to export sales.

(b) In the event of noncompliance with any provisions of these regulations CCC may disallow a claim submitted under an agreement for expenses incurred after the effective date of these regulations or terminate the agreement in addition to any other remedies available to CCC.

§ 1485.22 Paperwork Reduction Act assigned number.

Information collection requirements contained in these regulations have been submitted to OMB for approval under control number 0551-0027. However, these requirements are not effective until final clearance is received from OMB.

Signed at Washington, DC on January 31, 1990.

R.E. Anderson, Jr.,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 90-9608 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-44-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to Boeing Model 737 series airplanes, which would require inspection of the wings' inboard leading edge landing light cavities for improperly applied vapor barrier sealing, and rework, if necessary. This proposal is prompted by a manufacturer's quality control report which indicated that, during production assembly, the wings' inboard fixed leading edge vapor barrier may have been improperly sealed. In the event of a fuel leak into either wing's inboard fixed leading edge, fuel vapors may enter the landing light cavity. This condition, if not corrected, could lead to a potential fire hazard resulting from fuel vapor ignition.

DATES: Comments must be received no later than June 18, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-44-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-44-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A quality control report from the manufacturer indicated that, during production assembly of some Boeing Model 737 series airplanes, the wings' inboard fixed leading edge vapor barrier may have been improperly sealed. In the event of a fuel leak into either wing's inboard fixed leading edge, vapor may enter the wing root landing light cavity through tooling holes, around fasteners, around improperly sealed wire bundles, and through seams, slots, and joggles in the cavity walls if the vapor barrier sealant is improperly applied. This creates an unsafe condition in that the temperature of the landing light may surpass the flash point temperature of the fuel vapor, causing the vapor to ignite.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-57A1197, dated December 21, 1989, which describes procedures for inspection and application of the landing light cavity fuel vapor barrier seal.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require a one-time inspection of the wings' inboard leading edge landing light cavities for improperly applied vapor barrier sealing, in accordance with the service bulletin previously described and, if necessary, rework of the vapor barrier sealing prior to further flight. Additionally, operators would be required to submit a report of their inspection findings to the FAA.

There are approximately 1,800 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 850 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$238,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal

would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Alert Service Bulletin 737-57A1197, dated December 21, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fuel vapor leaks into the inboard fixed leading edge landing light cavities, resulting in fuel vapor ignition, accomplish the following:

A. Within the next 180 days after the effective date of this AD, inspect the wings' inboard leading edge landing and runway turn-off/taxi light cavities for improper fuel vapor barrier sealing, in accordance with Boeing Alert Service Bulletin 737-57A1197, dated December 21, 1989. If the sealing is found to be improperly applied, rework the vapor barrier sealing prior to further flight, in accordance with the service bulletin.

B. Within 10 days after the inspection required by paragraph A., above, if configuration discrepancies are discovered, submit a report of findings to the Manager, Seattle Manufacturing District Office, FAA, Transport Airplane Directorate, 7300 Perimeter Road South, Seattle, Washington 98108. The report must include the airplane serial number.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

Issued in Seattle, Washington, on April 18, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-9659 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-01]

Proposed Establishment of Transition Area; Milton, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to establish a 700 foot Transition Area at the Ona Airpark, Milton, WV, to support the development of a Standard Instrument Approach Procedure (SIAP) to this airport based on an existing aid to air navigation. The intended effect of this proposed action is to ensure segregation of the aircraft using the SIAP in instrument meteorological conditions from other aircraft operating under visual weather conditions in controlled airspace. In addition, the airport status would be changed from VFR to IFR.

DATES: Comments must be received on or before June 4, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward R. Trudeau, Manager, System Management Branch,

AEA-530, Docket No. 90-AEA-01, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, New York 11430; telephone: (718) 917-0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 90-AEA-01". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a 700 foot Transition Area at the Ona Airpark, Milton, WV, to support the development of a new SIAP for this airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

Authority: 49 U.S.C. 1349(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Milton, WV [New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center, lat. 38°26'26" N., long. 82°12'05" W., of Ona Airpark, Milton, WV; within 4 miles either side of the Charleston VORTAC 285°(T) 288°(M) radial extending from 11.5 miles northwest of the VORTAC to the 6.5-mile radius area.

Issued in Jamaica, New York, on April 6, 1990.

Billy E. Commander,

Acting Manager, Air Traffic Division.

[FR Doc. 90-9660 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Extension of Laredo, TX, Port Limits

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to extend the boundaries of the Laredo, Texas, port of entry. This document announces the proposed change in the port limits and invites public comments on the appropriateness of the action.

DATES: Comments must be received on or before June 25, 1990.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue NW., room 2119, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Linda Walfish, Office of Workforce Effectiveness and Development, Office of Inspection and Control (202) 566-9425.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs proposes to amend § 101.3, Customs Regulations (19 CFR 101.3), by extending the geographical limits of the port of entry of Laredo, Texas.

The proposed new boundary would encompass: the city of Laredo, the Laredo International Airport, the proposed international bridge between the U.S. and Columbia, Nuevo Leon, Mexico, and the proposed Union Pacific Railroad switching yard. This expansion of the port boundary would enable Customs to service the proposed points of entry without establishing separate port administrations.

The proposed revised boundary is as follows: Beginning at the intersection of the extended road of Chapote-Mezas Road and the easterly water's edge of the Rio Grande River; then in a northeasterly direction along the projected extension of Chapote-Mezas Road to its intersection with F.M. 1472; then in a southeasterly direction to the intersection of Las Tiendas Road and San Juan Road; then in a northeasterly direction along San Juan Road to its intersection with U.S. Highway 83 and Webb Road; then in a southeasterly direction along Webb Road to its intersection with Interstate Highway 35; then in a southeasterly direction to San Ignacio Road at a point 17 miles northeast from the intersection of Interstate Highway 35 and San Ignacio Road; then in a southeasterly direction to the intersection of State Highway 359 and Rubio; then in a southwesterly direction to Mangana-Hein Road at the point in tract 1, portion 42 of Webb County, Texas where the road begins a westerly direction; then in a westerly direction along Mangana-Hein Road to its intersection with U.S. Highway 83; then proceeding in a westerly direction along a projected extension of Mangana-Hein Road to its intersection with the easterly water's edge of the Rio Grande River; then in a northwesterly direction along the meanders of the Rio Grande River to its intersection with the projected extension of Chapote-Mezas Road and Point-of-Beginning.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m., at the Regulations and Disclosure Law Branch, room 2119, U.S. Customs Service Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Authority

The Secretary of the Treasury is advised by the Commissioner of Customs on matters affecting the establishment, abolishment, or change in ports of entry. Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5, February 17, 1987 (52 FR 6282).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this document. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs related activity throughout the country.

Although this change may have a limited effect on small entities in the Laredo, Texas area, such effect is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact on a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. This proposed amendment is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) not to have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the proposed amendment relates to the Customs field organization, it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and review as prescribed by E.O. 12291 are not required.

Drafting Information

The principal author of this document was Michael Smith, Regulations and Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Organization and functions (Government agencies).

Proposed Amendment to the Regulations

It is proposed to amend part 101, Customs Regulations (19 CFR part 101) as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR part 101), would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. It is proposed to amend § 101.3(b), Customs Regulations (19 CFR 101.3 (b)), by adding the period after "LAREDO" in the column headed "Ports of Entry" a comma and the phrase, "including the territory described in T.D. 90-_____".

Approved: April 11, 1990.

Carol Hallett,

Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90-9630 Filed 4-25-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 3]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of comment period.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting part VI of the MUTCD with the objective of improving the application of effective traffic control devices in a work zone. Initial recommendations from this effort were made available to the public for review and comment on December 23, 1988, at 53 FR 51826 followed by a second set of recommendations on June 5, 1989 at 54 FR 23990. The comment period for this notice closed on February 15, 1990. While many comments were received in response to these notices, several potential commenters have expressed the need for additional time to complete

reviews, to consolidate comments, and to prepare responses. The comment period is, therefore, being reopened until Wednesday, August 1, 1990.

DATES: Comments must be received on or before August 1, 1990. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Submit written, signed comments to FHWA Docket 89-1, Notice No. 3, Federal Highway Administration, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION OR A COPY OF THE PUBLIC INFORMATION PACKAGE CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration as the National Standard for highways open to public travel. Part VI "Traffic Controls For Street and Highway Construction and Maintenance Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during construction and maintenance operations on streets and highways in the United States. It has been determined that part VI needs to be revised to better serve the highway community. The title of Part VI is being changed to "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations." A contractor was retained by the FHWA to review and prepare recommended changes to part VI. The text of part VI is to be expanded to include "utility" and "emergency" subject areas as well as to include recent research results and other areas not adequately covered in the MUTCD. Also improved graphics will be added along with the clarification of ambiguous language. Notice Nos. 1 and 2 announced the availability of Public Information Packages that provided the contractor's recommended changes to part VI. The contract has now expired and the FHWA is currently reviewing and evaluating the docket comments and will continue to receive comments until August 1, 1990. This notice is being published to inform the public of the status of the contract to rewrite part VI

of the MUTCD, to reopen the comment period, and to request comments on the work done thus far.

The MUTCD is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. It may be purchased for \$22.00 (domestic price) from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-00308-2. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices (TCDs) standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on April 19, 1990.

T.D. Larson,
Administrator.

[FR Doc. 90-9684 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-12-89]

RIN 1545-AN38

Like-Kind Exchanges; Additional Rules for Exchanges of Personal Property and for Exchanges of Multiple Properties

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that amend §§ 1.1031(a)-1 and 1.1031(b)-1(c) of the Income Tax Regulations and add new §§ 1.1031(a)-2 and 1.1031(f)-1. Section 1031(a)(1) of the Internal Revenue Code of 1986 (Code), as amended, provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if that property is exchanged solely for property of a like kind that is to be held either for productive use in a trade or business or for investment. Existing § 1.1031(a)-1(b) provides that the nonrecognition rules of section 1031 do not apply to an exchange of one kind or class of property for property of a different kind or class. The proposed regulations provide additional guidance for determining whether personal property has been exchanged for property of a like kind or like class.

Section 1.1031(b)-1(c) is amended to clarify the treatment of liabilities incurred by the taxpayer in anticipation of an exchange under section 1031. Proposed rules are also provided for determining gain recognized and the basis of property received under section 1031 with respect to exchanges of multiple properties, including exchanges of entire businesses.

DATES: These proposed regulations are proposed to be effective for exchanges occurring after the date the final regulations are filed with the **Federal Register**. Written comments and requests for a public hearing must be received by July 25, 1990.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, (Attn: CC:CORP:T:R (IA-12-89)), room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers at 202-566-3297 (not a toll-free number), or at Internal Revenue Service, P.O. Box 7604, Ben Franklin Station (Attn: CC:CORP:T:R (IA-12-89)), room 4429, Washington, DC 20044.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments and additions to the Income Tax Regulations under section 1031 of the Internal Revenue Code of 1986, as amended. These proposed amendments and additions provide additional rules for determining the applicability of section 1031 in an exchange of personal property, as well as rules for determining gain recognized and the basis of property received in an exchange of multiple properties under section 1031. In addition, the treatment of liabilities incurred by the taxpayer in anticipation of an exchange under section 1031 is clarified.

Explanation of Provisions

Exchanges of Personal Property

Section 1031(a)(1) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment if the property is exchanged solely for property of a "like kind" that is to be held either for productive use in a trade or business or for investment. Section 1.1031(a)-1(b) of the regulations provides that the nonrecognition rules of section 1031 do not apply to an exchange of one kind or class of property for property of a different kind or class. The proposed regulations set

forth additional rules for determining whether personal property has been exchanged for property of a "like kind."

Under the proposed regulations, depreciable tangible personal property held for productive use in a business is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property that is either of a like kind or of a like class. An exchange of properties of a like kind may qualify for nonrecognition of gain or loss under section 1031 regardless of whether such properties are also of a like class. In addition, the proposed regulations provide that an exchange of properties of a like class may similarly qualify for nonrecognition of gain or loss under section 1031.

In general, depreciable tangible personal property held by the taxpayer for productive use in its business is of a like class to other depreciable tangible personal property to be held by the taxpayer for productive use in its business if the exchanged properties are either within the same "General Business Asset Class" or within the same "Product Class." For purposes of the proposed regulations, property may not be classified within more than one General Business Asset Class or more than one Product Class. Further, property within any General Business Asset Class may not be classified within a Product Class.

General Business Asset Classes

There are 13 General Business Asset Classes, which consist of depreciable tangible personal property described in asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87-56, 1987-2 C.B. 674, as modified. Rev. Proc. 87-56 provides a classification system for property for the purpose of determining depreciation deductions under section 168 of the Code. These General Business Asset Classes describe types of depreciable tangible personal property that are frequently used in many businesses. For example, the first three General Business Asset Classes are office furniture, fixtures, and equipment; information systems; and data handling equipment.

Product Classes

Product Classes consist of depreciable tangible personal property listed in a Product Code. A property's Product Code is its five-digit product class under the product coding system of the U.S. Department of Commerce, Bureau of the Census, 1987 Census of Manufactures and Census of Mineral Industries, 1989 Reference Series: *Numerical List of Manufactured and Mineral Products*

(Issued February 1989). The *Numerical List of Manufactured and Mineral Products* (Stock No. 003-024-06925-3) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202-783-3238, not a toll-free number). If obtaining the publication directly from the U.S. Government Printing Office is not practicable or feasible, taxpayers should contact the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station (Attn: CC:CORP:T:R (IA-12-89)), Room 4429, Washington, DC 20044, for assistance.

The Numerical List of Manufactured and Mineral Products lists principal products and services of the manufacturing and mining industries in the United States and thus lists substantially all of the various types of depreciable tangible personal property. Each of these products is assigned a seven-digit code. The first five digits (in some cases, the fifth digit may be a letter) of the seven-digit code represent a product class. This product coding system is an extension by the Bureau of the Census of the four-digit industrial classification of the manufacturing and mining industries as defined in the Standard Industrial Classification System. For further information, see Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual*: 1987.

The Numerical List of Manufactured and Mineral Products contains some five-digit product classes that do not describe depreciable tangible personal property (e.g., food and mineral products). For purposes of the proposed regulations, Product Classes are limited to Product Codes that describe depreciable tangible personal property.

Other Personal Property

Under the proposed regulations, an exchange of intangible personal property, nondepreciable personal property, or personal property held for investment may qualify for nonrecognition of gain or loss under section 1031 only if the exchanged properties are of a like kind. These types of property have not been divided into like classes because of the variety of such personal property and the lack of generally available classification systems. For example, the nature or character of intangible personal property is generally dependent not only on the type of right involved (e.g., a patent or a copyright) but also on the type of underlying property to which the intangible personal property relates. Thus, although the differences between

copyrights on different novels may best be described as differences of grade or quality, the differences between a copyright on a novel and a copyright on a song may best be described as differences of nature or character. For these reasons, no like classes are provided in the proposed regulations for intangible personal property, nondepreciable personal property, and personal property held for investment. Special rules are provided for exchanges of goodwill or going concern value.

Treatment of Liabilities

Section 1.1031 (b)-1 (c) of the existing regulations provides that consideration received in the form of an assumption of liabilities (or a transfer subject to a liability) is to be treated as "other property or money" for purposes of section 1031 (b). Where each party to the exchange either assumes a liability of the other party or acquires property subject to a liability, then, in determining the amount of "other property or money" for purposes of section 1031 (b), consideration given in the form of an assumption of liabilities (or a receipt of property subject to a liability) is offset against consideration received in the form of an assumption of liabilities (or a transfer subject to a liability). Additional rules are provided in § 1.1031 (d)-2, examples (1) and (2).

The proposed regulations amend § 1.1031 (b)-1 (c) to clarify that, in determining the amount of "other property or money" for purposes of section 1031 (b), consideration received by the taxpayer in the form of an assumption of liabilities (or a transfer subject to a liability) may not be offset by consideration given by the taxpayer in the form of an assumption of liabilities (or a receipt of property subject to a liability) with respect to liabilities incurred by the taxpayer in anticipation of an exchange under section 1031. This amendment is intended to clarify current law.

Exchanges of Multiple Properties

As a general rule, the application of section 1031 requires a property-by-property comparison for computing the gain recognized and basis of property received in a like-kind exchange. The proposed regulations provide an exception to this general rule in the case of an exchange of multiple properties. An exchange is an exchange of multiple properties if the properties transferred by the taxpayer in the exchange can be separated into more than one exchange group (as described below). For example, an exchange of apartment

buildings may be an exchange of multiple properties if, in addition to real property, personal property is transferred and received by the taxpayer in the exchange. Exchanges of entire businesses are also exchanges of multiple properties.

An exchange group consists of all properties transferred and received in the exchange which are of a "like kind." The separation of the properties transferred and the properties received by the taxpayer in the exchange into exchange groups requires a matching up of properties of a like kind or like class to the extent possible. For example, all properties within the same General Business Asset Class would be in the same exchange group. Thus, in an exchange of automobiles and computers for other automobiles and computers, two exchange groups would be created—one consisting of the automobiles transferred and received as part of the exchange and the other consisting of the computers transferred and received as part of the exchange.

To the extent the aggregate fair market value of the properties transferred and the properties received in each exchange group are not equal, a portion of the "other property or money" received as part of the exchange is allocated among the exchange groups in order to equalize the aggregate fair market value of the properties transferred and the aggregate fair market value of the properties received in each exchange group. For this purpose, "other property or money" received as part of the exchange includes property described in section 1031 (a)(2) (i.e., stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest, interests in a partnership, certificates of trust or beneficial interests, or choses in action), property received that is not of a like kind with any property transferred, and money. If in an exchange group the aggregate fair market value of the like kind property received exceeds the aggregate fair market value of the like kind property transferred, the excess is allocated to other exchange groups where it is treated as "other property or money" received in the exchange.

For example, assume a taxpayer exchanges an automobile with a fair market value of \$1100 and a computer with a fair market value of \$800 for an automobile with a fair market value of \$800, a computer with a fair market value of \$1000, and \$100 cash, as follows:

	Property transferred	Property received
Automobiles	\$1100	\$800
Computers	800	1000
Cash		100

The properties exchanged are first separated into two exchange groups. The first exchange group consists of the automobile with a fair market value of \$1100 being exchanged for the automobile with a fair market value of \$800 and the second exchange group consists of the computer with a fair market value of \$800 being exchanged for the computer with a fair market value of \$1000. In order to equalize the aggregate fair market value of the properties transferred and the aggregate fair market value of the properties received in each exchange group, the \$100 cash and one-fifth of the computer received by the taxpayer (i.e., \$200 worth of the computer) are allocated to the first exchange group and treated as "other property or money" received in exchange for the automobile transferred by the taxpayer.

Once exchange groups are created, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the amount of gain recognized and the basis of the property received in the exchange. For example, if the aggregate adjusted basis of the properties transferred in an exchange group exceeds the aggregate fair market value of the properties received in the exchange group the realized loss is not recognized under sections 1031 (a) and (c). In the case of the previous example, the amount realized on the exchange of the automobile is \$1100. If the adjusted basis of the automobile transferred by the taxpayer was \$400, then, under section 1031(b), the gain realized on the exchange (\$700) is recognized in an amount not in excess of the sum of the money received (\$100) and the fair market value of the other property received (\$200, which is one-fifth of the fair market value of the computer received in the exchange), resulting in total gain recognized with respect to the exchange group of \$300.

Liabilities

All liabilities of which the taxpayer is relieved in the exchange are offset against all liabilities assumed by the taxpayer in the exchange, regardless of whether the liabilities are recourse or nonrecourse and regardless of whether the liabilities are secured by or otherwise relate to specific property transferred or received as part of the

exchange. If there are excess liabilities assumed by the taxpayer as part of the exchange (i.e., the amount of liabilities assumed by the taxpayer exceeds the amount of the liabilities of which the taxpayer is relieved), the excess is allocated to the properties received in all the exchange groups, based on their fair market values and to the extent of their fair market values. The same rules apply if the exchange is part of a larger transaction (e.g., a transaction described in section 1060(a)), except that all liabilities assumed or relieved as part of such larger transaction are offset against each other.

Under certain circumstances, the allocation of excess liabilities assumed to property received in the exchange groups may result in more gain recognized under section 1031 than if the excess liabilities assumed were allocated under another method. For example, this may be the result in the case of a purchase or sale of a business which in part consists of an exchange of multiple properties where there are excess liabilities assumed as part of the overall transaction. On the other hand, the effect of offsetting all liabilities assumed by the taxpayer against all liabilities of which the taxpayer is relieved is generally to decrease the amount of gain recognized.

These proposed rules are intended to preserve consistency between these proposed regulations and existing § 1.1031 (d)-2, which provides in part that consideration received in the form of money or other property is not offset by consideration given in the form of an assumption of liabilities (or the receipt of property subject to a liability). Comments are requested on ways the operation of the rules regarding the treatment of liabilities may be improved, including comments regarding whether and how existing § 1.1031 (d)-2 should be modified.

Simplification

In drafting these proposed regulations, consideration has been given to ways in which the operation of underlying rules could be simplified. For example, the proposed regulations treat personal property as being of a like class based on published classification systems, rather than on descriptive rules of less certain application.

A major simplifying provision also appears in the treatment of an exchange of multiple properties. There, rather than requiring taxpayers to compute gain and basis property-by-property, taxpayers are permitted to group properties together. In addition, the allocation of a portion of "other property and money"

among exchange groups in order to equalize the aggregate fair market value of the properties transferred and the aggregate fair market value of the properties received in each exchange group often could require detailed prorations and numerous mathematical steps in determining the amount of gain recognized and the basis of the property received in the exchange. However, the same answers can be obtained through a consolidation of a number of the mathematical steps if, as the proposed regulations presume, the net fair market value of the properties transferred by the taxpayer is equal to the net fair market value of the properties received by the taxpayer in the exchange. Therefore, as a means of simplification, the proposed regulations provide that the gain realized with respect to each exchange group is calculated with reference to the aggregate fair market value of the properties transferred within that exchange group, rather than requiring an actual allocation of a portion of each item of "other property or money" to each exchange group as necessary to equalize the amount received and the amount transferred within that group. As a result, the computations of gain recognized and basis may be made on an aggregate basis within each exchange group.

Comments are requested on other ways in which the proposed regulations could be further clarified or simplified.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) and the Regulatory Flexibility Act (5 U.S.C. Chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administration of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and seven copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who submits written

comments on the proposed rules. Notice of the time and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Christopher Rogers, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the proposed regulations on matters of both substance and style.

List of Subjects

26 CFR 1.1001-1 through 1.1102-3

Basis, Gain and loss, Income taxes, Nontaxable exchanges.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR, chapter I, part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.1031(a)-1(b) is amended by adding a new sentence at the end thereof to read as follows:

§ 1.1031(a)-1 **Property held for productive use in trade or business or for investment.**
* * * * *

(b) * * * For additional rules for exchanges of personal property, see § 1.1031(a)-2.
* * * * *

Par. 3. Section 1.1031(a)-2 is added immediately following § 1.1031(a)-1 to read as follows:

§ 1.1031(a)-2 Additional rules for exchanges of personal property.

(a) *Introduction.* Section 1.1031(a)-1 (b) provides that the nonrecognition rules of section 1031 do not apply to an exchange of one kind or class of property for property of a different kind or class. This section contains additional rules for determining whether personal property has been exchanged for property of a like kind or like class. An exchange of properties of a like kind may qualify under section 1031 regardless of whether the properties are also of a like class. This section provides that personal property of a like class also meets the definition of "like kind" for purposes of section 1031. Under paragraph (b) of this section, depreciable tangible personal properties held for productive use in a business are

of a like class if they are either within the same General Business Asset Class (as defined in paragraph (b)(2) of this section) or within the same Product Class (as defined in paragraph (b)(3) of this section). Paragraph (c) of this section provides rules for exchanges of intangible personal property, nondepreciable personal property, and personal property held for investment.

(b) *Depreciable tangible personal property*—(1) *General rule.* Depreciable tangible personal property held for productive use in a business is exchanged for property of a "like kind" under section 1031 if the property is exchanged for property of a like kind or like class. Except as provided in paragraph (b)(4) of this section, depreciable tangible personal property held by the taxpayer for productive use in its business is of a like class to other depreciable tangible personal property to be held by the taxpayer for productive use in its business if the exchanged properties are either within the same General Business Asset Class or within the same Product Class. For purposes of this section, with respect to a transaction, a single property may not be classified within more than one General Business Asset Class or within more than one Product Class. In addition, property within any General Business Asset Class may not be classified within a Product Class. For purposes of this section a property's General Business Asset Class or Product Class is determined as of the date of the exchange.

(2) *General Business Asset Classes.* Property within a General Business Asset Class consists of depreciable tangible personal property described in one of asset classes 00.11 through 00.28 and 00.4 of Rev. Proc. 87-56, 1978-2 C.B. 674, as modified. These General Business Asset Classes describe types of depreciable tangible personal property that frequently are used in many businesses. The General Business Asset Classes are as follows:

- (i) Office furniture, fixtures, and equipment (asset class 00.11),
- (ii) Information systems (computers and peripheral equipment) (asset class 00.12),
- (iii) Data handling equipment, except computers (asset class 00.13),
- (iv) Airplanes (airframes and engines), except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines) (asset class 00.21),
- (v) Automobiles, taxis (asset class 00.22),
- (vi) Buses (asset class 00.23),

(vii) Light general purpose trucks (asset class 00.241),

(viii) Heavy general purpose trucks (asset class 00.242),

(ix) Railroad cars and locomotives, except those owned by railroad transportation companies (asset class 00.25),

(x) Tractor units for use over-the-road (asset class 00.26),

(xi) Trailers and trailer-mounted containers (asset class 00.27),

(xii) Vessels, barges, tugs, and similar water-transportation equipment, except those used in marine construction (asset class 00.28), and

(xiii) Industrial steam and electric generation and/or distribution systems (asset class 00.4).

(3) *Product classes.* Except as provided in paragraph (b)(4) of this section, property within a Product Class consists of depreciable tangible personal property that is listed in a Product Code. A property's Product Code is its 5-digit product class under the product coding system of the U.S. Department of Commerce, Bureau of the Census, 1987 Census of Manufactures and Census of Mineral Industries, 1989 Reference Series: Numerical List of Manufactured and Mineral Products (Issued February 1989). (The fifth digit of a product class may be either a letter or a numeral.) For example, construction machinery is listed in Product Codes 3531A through 3531M. An excavator and a power crane are within the same Product Class (and, therefore, are of a like class) because neither property is within a General Business Asset Class and both properties are listed in Product Code 3531E. However, an excavator and a mixer are not of a like class because neither property is within a General Business Asset Class and the properties are not within the same Product Class (*i.e.*, excavators are listed in Product Code 3531E, while mixers are listed in Product Code 3531F). Product Classes are limited to Product Codes that list depreciable tangible personal property. For purposes of this section, if a property is listed in more than one Product Code, the property shall be treated as listed in any one of such Product Code.

(4) *Property not listed in a Product Code or listed in a miscellaneous Product Code.* In the case of depreciable tangible personal property that is not listed in a Product Code or if the Product Code of such property is a miscellaneous category (*e.g.*, most Product Codes ending in a "9" are miscellaneous categories), the determination of whether the exchanged properties are of a like class is made

based on all the facts and circumstances.

(5) *Rev. Proc. 87-56 and Product Codes.* The asset classes of Rev. Proc. 87-56 and the Product Codes of the Numerical List of Manufactured and Mineral Products may be updated or modified from time to time. In such event, the General Business Asset Classes and the Product Classes of exchanged property will, to the extent possible, follow the respective successors of Rev. Proc. 87-56 and the Numerical List of Manufactured and Mineral Products, unless otherwise provided by the Commissioner. The rules provided in this section concerning the use of Rev. Proc. 87-56 and the Numerical List of Manufactured and Mineral Products are limited to exchanges under section 1031. No inference is intended with respect to the classification of property for other purposes, such as depreciation.

(6) *Examples.* The application of this paragraph (b) may be illustrated by the following examples:

Example (1). Taxpayer A transfers a personal computer (asset class 00.12) that A has held for productive use in its business to B in exchange for a printer (asset class 00.12) that A will hold for productive use in its business. With respect to A, the properties exchanged are within the same General Business Asset Class and therefore are of a like class.

Example (2). Taxpayer C transfers an airplane (asset class 00.21) that C has held for productive use in its business to D in exchange for a heavy general purpose truck (asset class 00.242) that C will hold for productive use in its business. The properties exchanged are not of a like class because they are within different General Business Asset Classes. Because each of the properties is within a General Business Asset Class, the properties may not be classified within a Product Class. The airplane and heavy general purpose truck are also not of a like kind. Therefore, the exchange does not qualify for nonrecognition of gain or loss under section 1031.

Example (3). Taxpayer E transfers a grader that E has held for productive use in its business to F in exchange for a scraper that E will hold for productive use in its business. Neither property is within any of the General Business Asset Classes, and both properties are listed in Product Code 3531G. With respect to E, the properties exchanged are within the same Product Class and therefore are of a like class.

Example (4). Taxpayer G transfers a personal computer (asset class 00.12), an airplane (asset class 00.21) and a sanding machine (listed in Product Code 35533), all of which G has held for productive use in its business, to H in exchange for a printer (asset class 00.12), a heavy general purpose truck (asset class 00.242) and a lathe (listed in Product Code 35533), all of which G will hold for productive use in its business. With respect to G, the personal computer and the

printer are of a like class because they are within the same General Business Asset Class; the sanding machine and the lathe are of a like class because neither property is within any of the General Business Asset Classes and they are within the same Product Class. The airplane and the heavy general purpose truck are neither within the same General Business Asset Class nor within the same Product Class, and are not of a like kind.

(c) *Intangible personal property, nondepreciable personal property, and personal property held for investment—*

(1) *General rule.* An exchange of intangible personal property, nondepreciable personal property, or personal property held for investment does not qualify for nonrecognition of gain or loss under section 1031 if the exchanged properties are not of a like kind. No like classes are provided for such property. Whether intangible personal property is of a like kind to other intangible personal property generally depends not only on the type of right involved (*e.g.*, a patent or a copyright) but also on the type of underlying property to which the tangible personal property relates.

(2) *Special rules for goodwill or going concern value.* The goodwill or going concern value of dissimilar businesses are not of a like kind. The goodwill or going concern value of similar businesses are treated as of a like kind only in rare and unusual circumstances.

(3) *Examples.* The application of this paragraph (c) may be illustrated by the following examples:

Example (1). Taxpayer K exchanges a copyright on a novel for a copyright on a different novel. The properties exchanged are of a like kind.

Example (2). Taxpayer J exchanges a copyright on a novel for a copyright on a song. The properties exchanged are not of a like kind.

Example (3). Taxpayer M exchanges all of the assets of his laundry business for all of the assets of N's laundry business. The exchanged assets include the goodwill of each business. The laundries are in the same city and both provide dry cleaning and laundry services to local customers. M and N have each spent several years working in their respective laundries. Because there is no evidence of rare or unusual circumstances relating to the goodwill of the exchanged laundries, the exchange of goodwill is not an exchange of property of a like kind.

Par. 4. Section 1.1031 (b)-1 (c) is amended by adding a new sentence after the second sentence thereof to read as follows:

§ 1.1031(b)-1 Receipt of other property or money in tax-free exchange.

* * * * *

(c) * * * The preceding sentence shall not apply to the extent of any liabilities incurred by the taxpayer in anticipation of an exchange under section 1031.

Par. 5. Section 1.1031(f)-1 is added immediately following § 1.1031(e)-1 to read as follows:

§ 1.1031(f)-1 Exchange of multiple properties.

(a) *Introduction*—(1) *Overview.* As a general rule, the application of section 1031 requires a property-by-property comparison for computing the gain recognized and basis of property received in a like-kind exchange. This section provides an exception to this general rule in the case of an exchange of multiple properties. An exchange is an exchange of multiple properties if, under paragraph (b)(2) of this section, more than one exchange group is created. Paragraph (b) of this section provides rules for computing the amount of gain recognized in an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031. Paragraph (c) of this section provides rules for computing the basis of properties received in an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031.

(2) *General approach.* In general, the amount of gain recognized in an exchange of multiple properties is computed by first separating the properties transferred and the properties received by the taxpayer in the exchange into exchange groups in the manner described in paragraph (b)(2) of this section. Next, all liabilities assumed by the taxpayer as part of the exchange are offset by all liabilities of which the taxpayer is relieved as part of the exchange, with the excess liabilities assumed or relieved allocated in accordance with paragraph (b)(2)(ii) of this section. Then, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the amount of gain recognized in the exchange. See §§ 1.1031(b)-1 and 1.1031(c)-1. Finally, the rules of section 1031 and the regulations thereunder are applied separately to each exchange group to determine the basis of the properties received in the exchange. See §§ 1.1031(d)-1 and 1.1031(d)-2. The separation of the properties transferred and the properties received in the exchange into exchange groups involves matching up properties of a like kind or like class to the extent possible. For purposes of this section, the exchanges are assumed to be made at arms' length, and there is a presumption that the amount realized with respect to the

properties transferred in each exchange group equals their aggregate fair market value. As a result of this presumption, the rules provided in paragraphs (b) and (c) of this section are based upon a deemed allocation of property and money among the exchange groups to the extent necessary to equalize the aggregate fair market value of the properties transferred and the aggregate fair market value of the properties received within each exchange group.

(b) *Computation of gain recognized*—(1) *In general.* In computing the amount of gain recognized in an exchange of multiple properties, the fair market value must be determined for each property transferred and for each property received by the taxpayer in the exchange and the adjusted basis must be determined for each property transferred by the taxpayer in the exchange.

(2) *Exchange groups and residual group.* The properties transferred and the properties received by the taxpayer in the exchange are separated into exchange groups and a residual group in the following manner:

(i) *Exchange groups.* Each exchange group consists of the properties transferred and received in the exchange, all of which are of a like kind or like class. Property eligible for inclusion within an exchange group does not include money or property described in section 1031(a)(2) (*i.e.*, stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest, interests in partnership, certificates of trust or beneficial interests, or choses in action). For example, an exchange group may consist of all exchanged properties that are within the same General Business Asset Class or within the same Product Class (as defined in § 1.1031(a)-2(b)). Each exchange group must consist of at least one property transferred and at least one property received in the exchange.

(ii) *Treatment of liabilities.* (A) All liabilities assumed by the taxpayer as part of the exchange are offset against all liabilities of which the taxpayer is relieved as part of the exchange, regardless of whether such liabilities are recourse or nonrecourse and regardless of whether such liabilities are secured by or otherwise related to specific property transferred or received as part of the exchange. See §§ 1.1031(b)-1(c) and 1.1031(d)-2. For purposes of this section, liabilities assumed by the taxpayer as part of the exchange consist of liabilities of the other party to the exchange assumed by the taxpayer and liabilities subject to which the other

party's property is transferred in the exchange. Similarly, liabilities of which the taxpayer is relieved as part of the exchange consist of liabilities of the taxpayer assumed by the other party to the exchange and liabilities subject to which the taxpayer's property is transferred.

(B) If there are excess liabilities assumed by the taxpayer as part of the exchange (*i.e.*, the amount of liabilities assumed by the taxpayer exceeds the amount of liabilities of which the taxpayer is relieved), such excess is allocated among the exchange groups (but not to the residual group) in proportion to the aggregate fair market value of the properties received by the taxpayer in the exchange groups. The amount of excess liabilities assumed by the taxpayer that are allocated to each exchange group may not exceed the aggregate fair market value of the properties received in the exchange group.

(C) If there are excess liabilities of which the taxpayer is relieved as part of the exchange (*i.e.*, the amount of liabilities of which the taxpayer is relieved exceeds the amount of liabilities assumed by the taxpayer), such excess is allocated to the residual group to the extent such excess would be so allocated if it were treated as a Class I asset for purposes of paragraph (b)(2)(iii) of this section.

(D) Paragraph (b)(2)(ii)(A), (B), and (C) of this section shall be applied in the same manner even if section 1031 and this section apply to only a portion of a larger transaction (such as a transaction described in section 1060(c) and § 1.1060-1T(b)). In such event, the amount of excess liabilities assumed by the taxpayer or the amount of excess liabilities of which the taxpayer is relieved shall be determined based on all liabilities assumed by the taxpayer and all liabilities of which the taxpayer is relieved as part of such larger transaction.

(iii) *Residual group.* A residual group is created consisting of money or property that is not subject to the nonrecognition provisions of section 1031. For this purpose, property includes property described in section 1031(a)(2) (*i.e.*, stock in trade or other property held primarily for sale, stocks, bonds, notes, other securities or evidences of indebtedness or interest, interests in a partnership, certificates of trust or beneficial interests, or choses in action), property transferred that is not of a like kind or like class with any property received, and property received that is not of a like kind or like class with any property transferred. The amount of

money or property allocated to the residual group is equal to the difference between the aggregate fair market value of the properties transferred in all of the exchange groups and the aggregate fair market value of the properties received in all of the exchange groups (taking liabilities into account in the manner described in paragraph (b)(2)(ii) of this section). In general the residual group will consist of either money or property transferred in the exchange or money or property received in the exchange, but not both. The money and properties that are allocated to the residual group are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, and then from Class IV assets. The terms Class I assets, Class II assets, Class III assets, and Class IV assets have the same meanings as in § 1.1060-1T(d). Within each Class, taxpayers may choose which properties are allocated to the residual group.

(iv) *Exchange group surplus and deficiency.* For each of the exchange groups described in this section, an "exchange group surplus" or an "exchange group deficit" is the excess of the aggregate fair market value of the properties received (less the amount of any excess liabilities assumed by the taxpayer that are allocated to the exchange group) in an exchange group over the aggregate fair market value of the properties transferred in such exchange group. An exchange group deficiency is the excess of the aggregate fair market value of the properties transferred in an exchange group over the aggregate fair market value of the properties received (less the amount of any excess liabilities assumed by the taxpayer that are allocated to that exchange group) in such exchange group.

(3) *Amount of gain recognized.* (i) For purposes of this section, the amount of gain or loss realized with respect to each exchange group and the residual group is the difference between the aggregate fair market value of the properties transferred in that exchange group or residual group and the properties' aggregate adjusted basis. The gain realized with respect to each exchange group is recognized to the extent of the lesser of the gain realized and the amount of the exchange group deficiency, if any. Losses realized with respect to an exchange group are not recognized. See section 1031 (a) and (c). The total amount of gain recognized under section 1031 in the exchange is the sum of the amount of gain recognized with respect to each exchange group.

With respect to the residual group, the gain or loss realized (as determined under this section) is recognized as provided in section 1001 or other applicable provision of the Code.

(ii) The amount of gain or loss realized and recognized with respect to properties transferred by the taxpayer that are not within any exchange group or the residual group is determined under section 1001 and other applicable provisions of the Code with proper adjustments made for all liabilities not allocated to the exchange group or the residual group.

(c) *Computation of basis of properties received.* In an exchange of multiple properties qualifying for nonrecognition of gain or loss under section 1031 and this section, the aggregate basis of properties received in each of the exchange groups is the aggregate adjusted basis of the properties transferred by the taxpayer within that exchange group, increased by the amount of gain recognized by the taxpayer with respect to that exchange group, increased by the amount of the exchange group surplus or decreased by the amount of the exchange group deficiency, and increased by the amount, if any, of excess liabilities assumed by the taxpayer that are allocated to that exchange group. The resulting aggregate basis of each exchange group is allocated proportionately to each property received in the exchange group in accordance with its fair value. The basis of each property received within the residual group (other than money) is equal to its fair market value in accordance with section 1012 or other applicable provision of the Code.

(d) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). (i) K exchanges computer A (asset class 00.12) and automobile A (asset class 00.22), both of which were held by K for productive use in its business, with W for printer B (asset class 00.12) and automobile B (asset class 00.22), both of which will be held by K for productive use in its business. K's adjusted basis and the fair market value of the exchanged properties are as follows:

	Adjusted basis	Fair market value
Computer A.....	\$375	\$1000
Automobile A.....	1500	4000
Printer B.....		2050
Automobile B.....		2950

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A and printer B (both are within the same General Business Asset Class) and, as to K, has an exchange group surplus of \$1050 because the fair market value of printer B (\$2050) exceeds the fair market value of computer A (\$1000) by that amount.

(B) The second exchange group consists of automobile A and automobile B (both are within the same General Business Asset Class) and, as to K, has an exchange group deficiency of \$1050 because the fair market value of automobile A (\$4000) exceeds the fair market value of automobile B (\$2950) by that amount.

(iii) K recognizes gain on the exchange as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A (\$1000) over its adjusted basis (\$375), or \$625. The amount of gain recognized is the lesser of the gain realized (\$625) and the exchange group deficiency (\$0), or \$0.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A (\$4000) over its adjusted basis (\$1500), or \$2500. The amount of gain recognized is the lesser of the gain realized (\$2500) and the exchange group deficiency (\$1050), or \$1050.

(iv) The total amount of gain recognized by K in the exchange is the sum of the gains recognized with respect to both exchange groups (\$0 + \$1050), or \$1050.

(v) The bases of the property received by K in the exchange, printer B and automobile B, are determined in the following manner:

(A) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group (\$375), increased by the amount of gain recognized with respect to that exchange group (\$0), increased by the amount of the exchange group surplus (\$1050), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$1425. Because printer B was the only property received within the first exchange group, the entire basis of \$1425 is allocated to printer B.

(B) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within the exchange group (\$1500), increased by the amount of gain recognized with respect to that exchange group (\$1050), decreased by the amount of the exchange group deficiency (\$1050), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$1500. Because automobile B was the only property received within the second exchange group, the entire basis of \$1500 is allocated to automobile B.

Example (2). (i) F exchanges computer F (asset class 00.12) and automobile A (asset class 00.22), both of which were held by F for productive use in its business, with G for printed B (asset class 00.12) and automobile B (asset class 00.22), both of which will be held by F for productive use in its business, and corporate stock and \$500 cash. The adjusted basis and fair market value of the properties are as follows:

	Adjusted basis	Fair market value
Computer A.....	\$375	\$1000
Automobile A.....	3500	4000
Printer B.....		800
Automobile B.....		2950
Corporate Stock.....		750
Cash.....		500

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A and printer B (both are within the same General Business Asset Class) and, as to F, has an exchange group deficiency of \$200 because the fair market value of computer A (\$1000) exceeds the fair market value of printer B (\$800) by that amount.

(B) The second exchange group consists of automobile A and automobile B (both are within the same General Business Asset Class) and, as to F, has an exchange group deficiency of \$1050 because the fair market value of automobile A (\$4000) exceeds the fair market value of automobile B (\$2950) by that amount.

(C) Because the aggregate fair market value of the properties transferred by F in the exchange groups (\$5,000) exceeds the aggregate fair market value of the properties received by F in the exchange groups (\$3,750) by \$1,250, there is a residual group in that

amount consisting of the \$500 cash and the \$750 worth of corporate stock.

(iii) F recognizes gain on the exchange as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A (\$1000) over its adjusted basis (\$375), or \$625. The amount of gain recognized is the lesser of the gain realized (\$625) and the exchange group deficiency (\$200), or \$200.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A (\$4000) over its adjusted basis (\$3500), or \$500. The amount of gain recognized is the lesser of the gain realized (\$500) and the exchange group deficiency (\$1050), or \$500.

(C) No property transferred by F was allocated to the residual group. Therefore, F does not recognize gain or loss with respect to the residual group.

(iv) The total amount of gain recognized by F in the exchange is the sum of the gains recognized with respect to both exchange groups (\$200 + \$500), or \$700.

(v) The bases of the properties received by F in the exchange (printer B, automobile B, and the corporate stock) are determined in the following manner:

(A) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group (\$375), increased by the amount of gain recognized with respect to

that exchange group (\$200), decreased by the amount of the exchange group deficiency (\$200), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$375. Because printer B was the only property received within the first exchange group, the entire basis of \$375 is allocated to printer B.

(B) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group (\$3500), increased by the amount of gain recognized with respect to that exchange group (\$500), decreased by the amount of the exchange group deficiency (\$1050), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$2950. Because automobile B was the only property received within the second exchange group, the entire basis of 2950 is allocated to automobile B.

(C) The basis of the property received within the residual group (the corporate stock) is equal to its fair market value or \$750. Cash of \$500 is also received within the residual group.

Example (3). (i) J and H enter into an exchange of the following properties. All of the property (except for the inventory) transferred by J was held for productive use in J's business. All of the property received by J will be held by J for productive use in its business.

J Transfers			H Transfers	
Property	Adjusted basis	Fair market value	Property	Fair market value
Computer A.....	\$1500	\$5000	Computer Z.....	\$4500
Computer B.....	500	3000	Printer Y.....	2500
Printer C.....	2000	1500	Real Estate X.....	1000
Real Estate D.....	1200	2000	Real Estate W.....	4000
Real Estate E.....	0	1800	Grader V.....	2000
Scrapper F.....	3300	2500	Truck T.....	1700
Inventory.....	1000	1700	Cash.....	1800
Total.....	\$9500	\$17,500	Cash.....	\$17,500

(ii) Under paragraph (b)(2) of this section, the properties exchanged are separated into exchange groups as follows:

(A) The first exchange group consists of computer A, computer B, printer C, computer Z, and printer Y (all are within the same General Business Asset Class) and, as to J, has an exchange group deficiency of \$2500 ((\$5000 + \$3000 + \$1500) - (\$4500 + \$2500)).

(B) The second exchange group consists of real estate D, E, X and W (all are of a like kind) and, as to J, has an exchange group surplus of \$1200 ((\$1000 + \$4000) - (\$2000 + \$1800)).

(C) The third exchange group consists of scrapper F and grader V (both are listed in Product Code 3531G and thus are within the same Product Class) and, as to J, has an exchange group deficiency of \$500 (\$2500 - \$2000).

(D) Because the aggregate fair market value of the properties transferred by J in the exchange groups (\$15,800) exceeds the aggregate fair market value of the properties

received by J in the exchange groups (\$14,000) by \$1,800, there is a residual group in that amount consisting of the \$1800 cash (a Class I asset).

(E) The transaction also includes a taxable exchange of inventory for truck T (which is not of a like kind or like class to any property transferred in the exchange).

(iii) J recognizes gain on the transaction as follows:

(A) With respect to the first exchange group, the amount of gain realized is the excess of the aggregate fair market value of the properties transferred in the exchange group (\$9500) over the aggregate adjusted basis (\$4000), or \$5500. The amount of gain recognized is the lesser of the gain realized (\$5500) and the exchange group deficiency (\$2500), or \$2500.

(B) With respect to the second exchange group, the amount of gain realized is the excess of the aggregate fair market value of the properties transferred in the exchange group (\$3800) over the aggregate adjusted

basis (\$1200), or \$2600. The amount of gain recognized is the lesser of the gain realized (\$2600) and the exchange group deficiency (\$0), or \$0.

(C) With respect to the third exchange group, a loss is realized in the amount of \$800 because the fair market value of the property transferred in the exchange group (\$2500) is less than its adjusted basis (\$3300). Although a loss of \$800 was realized, under section 1031 (a) and (c) losses are not recognized.

(D) No property transferred by J was allocated to the residual group. Therefore, J does not recognize gain or loss with respect to the residual group.

(E) With respect to the taxable exchange of inventory for truck T, gain of \$700 is realized and recognized by J (amount realized of \$1700 (the fair market value of truck T) less the adjusted basis of the inventory (\$1000)).

(iv) The total amount of gain recognized by J in the transaction is the sum of the gains recognized under section 1031 with respect to

each exchange group (\$2500+\$0+\$0) and any gain recognized outside of section 1031 (\$700), or \$3200.

(v) The bases of the property received by J in the exchange are determined in the following manner:

(A) The aggregate basis of the properties received in the first exchange group is the adjusted basis of the properties transferred within that exchange group (\$4000), increased by the amount of gain recognized with respect to that exchange group (\$2500), decreased by the amount of the exchange group deficiency (\$2500), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$4000. This \$4000 of basis is allocated proportionately among the assets received within the first exchange group in accordance with their fair market values: computer Z's basis is \$2571 ($\$4000 \times \$4500 / \7000); printer Y's basis is \$1429 ($\$4000 \times \$2500 / \7000).

(B) The aggregate basis of the properties received in the second exchange group is the adjusted basis of the properties transferred within that exchange group (\$1200), increased by the amount of gain recognized with respect to that exchange group (\$0), increased by the amount of the exchange group surplus (\$1200), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$2400. This \$2400 of basis is allocated proportionately among the assets received within the second exchange group in accordance with their fair market values: real estate X's basis is \$480 ($\$2400 \times \$1000 / \5000); real estate W's basis is \$1920 ($\$2400 \times \$4000 / \5000).

(C) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group (\$3300), increased by the amount of gain recognized with respect to that exchange group (\$0), decreased by the amount of the exchange group deficiency (\$500), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$2800. Because grader V was the only property received within the third exchange group, the entire basis of \$2800 is allocated to grader V.

(D) Cash of \$1800 is received within the residual group.

(E) The basis of the property received in the taxable exchange (truck T) is equal to its cost of \$1,700.

Example (4). (i) B exchanges computer A (asset class 00.12), automobile A (asset class 00.22) and truck A (asset class 00.241), with C for computer R (asset class 00.12), automobile R (asset class 00.22), truck R (asset class 00.241) and \$400 cash. All properties transferred by either B or C were held for productive use in the respective transferor's business. Similarly, all properties to be received by either B or C will be held for productive use in the respective recipient's business. Automobile A, automobile R and truck R are each secured by a nonrecourse liability and are transferred subject to such liability. The adjusted basis, fair market value, and liability secured by each property, if any are as follows:

	Adjusted basis	Fair market value	Liability
B Transfers:			
Computer A.....	\$800	\$1,500	
Automobile A.....	900	2,500	\$500
Truck A.....	700	2,000	
C Transfers:			
Computer R.....	1,100	1,600	
Automobile R.....	2,100	3,100	750
Truck R.....	600	1,400	250
Cash.....		400	

(ii) The tax treatment to B is as follows:

(A)(1) The first exchange group consists of computers A and R (both are within the same General Business Asset Class).

(2) The second exchange group consists of automobiles A and R (both are within the same General Business Asset Class).

(3) The third exchange group consists of trucks A and R (both are in the same General Business Asset Class).

(B) Under paragraph (b)(2)(ii) of this section, all liabilities assumed by B (\$1000) are offset by all liabilities of which R is relieved (\$500), resulting in excess liabilities assumed of \$500. The excess liabilities assumed of \$500 is allocated among the exchange groups in proportion to the fair market value of the properties received by B in the exchange groups as follows:

(1) \$131 of excess liabilities assumed ($\$500 \times \$1600 / \$6100$) is allocated to the first exchange group. The first exchange group has an exchange group deficiency of \$31 because the fair market value of computer A (\$1500) exceeds the fair market value of computer R less the excess liabilities assumed allocated to the exchange group ($\$1600 - \131) by that amount.

(2) \$254 of excess liabilities assumed ($\$500 \times \$3100 / \$6100$) is allocated to the second exchange group. The second exchange group has an exchange group surplus of \$346 because the fair market value of automobile R less the excess liabilities assumed allocated to the exchange group ($\$3100 - \254) exceeds the fair market value of automobile A (\$2500) by that amount.

(3) \$115 of excess liabilities assumed ($\$500 \times \$1400 / \$6100$) is allocated to the third exchange group. The third exchange group has an exchange group deficiency of \$715 because the fair market value of truck A (\$2000) exceeds the fair market value of truck R less the excess liabilities assumed allocated to the exchange group ($\$1400 - \115) by that amount.

(4) The difference between the aggregate fair market value of the properties transferred in all of the exchange groups, \$6000, and the aggregate fair market value of the properties received in all of the exchange groups (taking excess liabilities assumed into account), \$5600, is \$400. Therefore there is a residual group in that amount consisting of \$400 cash received.

(C) B recognizes gain on the exchange as follows:

(1) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer A (\$1500) over its adjusted basis (\$800), or \$700. The amount of gain recognized is the lesser of

the gain realized (\$700) and the exchange group deficiency (\$31), or \$31.

(2) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile A (\$2500) over its adjusted basis (\$900), or \$1600. The amount of gain recognized is the lesser of the gain realized (\$1600) and the exchange group deficiency (\$0), or \$0.

(3) With respect to the third exchange group, the amount of gain realized is the excess of the fair market value of truck A (\$2000) over its adjusted basis (\$700), or \$1300. The amount of gain recognized is the lesser of gain realized (\$1300) and the exchange group deficiency (\$715), or \$715.

(4) No property transferred by B was allocated to the residual group. Therefore, B does not recognize gain or loss with respect to the residual group.

(D) The total amount of gain recognized by B in the exchange is the sum of the gains recognized under section 1031 with respect to each exchange group (\$31 + \$0 + \$715), or \$746.

(E) The bases of the property received by B in the exchange (computer R, automobile R, and truck R) are determined in the following manner:

(1) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group (\$800), increased by the amount of gain recognized with respect to that exchange group (\$31), decreased by the amount of the exchange group deficiency (\$31), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$131), or \$931. Because computer R was the only property received within the first exchange group, the entire basis of \$931 is allocated to computer R.

(2) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group (\$900), increased by the amount of gain recognized with respect to that exchange group (\$0), increased by the amount of the exchange group surplus (\$346), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$254), or \$1500. Because automobile R was the only property received within the second exchange group, the entire basis of \$1500 is allocated to automobile R.

(3) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group (\$700), increased by the amount of gain recognized with respect to that exchange group (\$715), decreased by the amount of the exchange group deficiency (\$715), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$115), or \$815. Because truck R was the only property received within the third exchange group, the entire basis of \$815 is allocated to truck R.

(F) Cash of \$400 is also received by B.

(iii) The tax treatment to C is as follows:

(A)(1) The first exchange group consists of computers R and A (both are within the same General Business Asset Class).

(2) The second exchange group consists of automobiles R and A (both are within the same General Business Asset Class).

(3) The third exchange group consists of trucks R and A (both are in the same General Business Asset Class).

(B) Under paragraph (b)(2)(ii) of this section, all liabilities of which C is relieved (\$1000) are offset by all liabilities assumed by C (\$500), resulting in excess liabilities relieved of \$500. This excess liabilities relieved is treated as cash received by C.

(1) The first exchange group has an exchange group deficiency of \$100 because the fair market value of computer R (\$1600) exceeds the fair market value of computer A (\$1500) by that amount.

(2) The second exchange group has an exchange group deficiency of \$600 because the fair market value of automobile R (\$3100) exceeds the fair market value of automobile A (\$2500) by that amount.

(3) The third exchange group has an exchange group surplus of \$600 because the fair market value of truck A (\$2000) exceeds the fair market value of truck R (\$1400) by that amount.

(4) The difference between the aggregate fair market value of the properties transferred by C in all of the exchange groups, \$6100, and the aggregate fair market value of the properties received by C in all of the exchange groups, \$6000, is \$100. Therefore, there is a residual group in that amount, consisting of excess liabilities relieved of \$100, which is treated as cash received by C.

(5) The \$400 cash paid by C and \$400 of the excess liabilities relieved which is treated as cash received by C are not within the exchange groups or the residual group.

(C) C recognizes gain on the exchange as follows:

(1) With respect to the first exchange group, the amount of gain realized is the excess of the fair market value of computer R (\$1600) over its adjusted basis (\$1100), or \$500. The amount of gain recognized is the lesser of the gain realized (\$500) and the exchange group deficiency (\$100), or \$100.

(2) With respect to the second exchange group, the amount of gain realized is the excess of the fair market value of automobile R (\$3100) over its adjusted basis (\$2100), or \$1000. The amount of gain recognized is the lesser of the gain realized (\$1000) and the exchange group deficiency (\$600), or \$600.

(3) With respect to the third exchange group, the amount of gain realized is the excess of the fair market value of truck R (\$1400) over its adjusted basis (\$800), or \$600. The amount of gain recognized is the lesser of gain realized (\$600) and the exchange group deficiency (\$0), or \$0.

(4) No property transferred by C was allocated to the residual group. Therefore, C does not recognize any gain with respect to the residual group.

(D) The total amount of gain recognized by C in the exchange is the sum of the gains recognized under section 1031 with respect to each exchange group (\$100 + \$600 + \$0), or \$700.

(E) The bases of the properties received by C in the exchange (computer A, automobile A, and truck A) are determined in the following manner:

(1) The basis of the property received in the first exchange group is the adjusted basis of the property transferred within that exchange group (\$1100), increased by the amount of gain recognized with respect to that exchange group (\$100), decreased by the amount of the exchange group deficiency (\$100), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$1100. Because computer A was the only property received within the first exchange group, the entire basis of \$1100 is allocated to computer A.

(2) The basis of the property received in the second exchange group is the adjusted basis of the property transferred within that exchange group (\$2100), increased by the amount of gain recognized with respect to that exchange group (\$600), decreased by the amount of the exchange group deficiency (\$600), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$2100. Because automobile A was the only property received within the second exchange group, the entire basis of \$2100 is allocated to automobile A.

(3) The basis of the property received in the third exchange group is the adjusted basis of the property transferred within that exchange group (\$800), increased by the amount of gain recognized with respect to that exchange group (\$0), increased by the amount of the exchange group surplus (\$600), and increased by the amount of excess liabilities assumed allocated to that exchange group (\$0), or \$1200. Because truck A was the only property received within the third exchange group, the entire basis of \$1200 is allocated to truck A.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90-9619 Filed 4-25-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Abandoned Mine Land Reclamation Plan; Amendment To Revise the Project Ranking and Selection Criteria

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

ACTION: Proposed rule; withdrawal of proposed reclamation plan amendment.

SUMMARY: OSM is announcing the withdrawal of a proposed amendment submitted by the Commonwealth of Pennsylvania as modification to its approved Abandoned Mine Lands Reclamation (AMLR) Plan (hereinafter referred to as the Pennsylvania Plan). The withdrawn amendment concerns the criteria for ranking and selecting projects to be funded under the AMLR program. By letter dated March 19, 1990,

the Pennsylvania Department of Environmental Resources (DER) withdrew the proposed amendment.

DATES: This withdrawal is effective April 26, 1990.

FOR FURTHER INFORMATION CONTACT:

Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Third Floor, Harrisburg Transportation Center, 4th and Market Streets, Harrisburg, Pennsylvania, 17101. Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Pennsylvania Plan as submitted on November 3, 1980. Information regarding the general background on the Pennsylvania Plan, including the Secretary's findings and the disposition of comments can be found in the July 30, 1982 *Federal Register* (47 FR 33081-33083).

II. Discussion of Amendment

By letter dated September 7, 1988, (OSM Administrative Record No. PA 717), the Pennsylvania DER submitted to OSM a proposed amendment to revise the AMLR plan. The amendment was to change the current project ranking and selection criteria from a numerical ranking point system to one which relied on the professional judgement of DER personnel to determine relative hazard severity levels among projects. By *Federal Register* notice (53 FR 50424-50425) dated December 15, 1988, OSM provided an opportunity for public comment on the proposed amendment. By letter dated February 27, 1989, OSM agreed to a request by DER that formal processing of the amendment be withheld until DER could complete discussions with interested parties. Since that time, DER sought the assistance of the Pennsylvania Mining and Reclamation Advisory Board, the Citizens Advisory Council, and met with interested parties to finalize the project ranking and selection process. By letter dated March 19, 1990, DER withdrew the proposed amendment. OSM approved the amendment withdrawal and advised DER that all sites selected for funding must be processed in accordance with ranking and selection criteria in the originally approved Reclamation Plan. Therefore, the proposed Reclamation Plan amendment published in the December 15, 1988, *Federal Register* (53 FR 50424-50425) is withdrawn and part 938 title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 938

Abandoned Mine Land Reclamation Plan Amendment.

Dated: April 16, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-9695 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD7-90-08]

Drawbridge Operation Regulations; Savannah River, GA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the owner of the railroad bridge at Cylo, Georgia, CSX Transportation, the Coast Guard is considering a change to the regulations governing the operation of the railroad bridge by requiring greater advance notice be given before opening the bridge for passage of water traffic. This proposal is being made because of a steady decrease in requests for opening the draw over the past four years. This action will accommodate the needs of rail traffic and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before June 11, 1990.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Ave., Miami, FL 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at Brickell Plaza Federal Building, room 406, 909 SE. 1st Avenue, Miami, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday except Federal holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

Gary D. Pruitt (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their name and address, identify the bridge, and give reasons for concurrence with, or any recommended change to, the proposal. The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Gary D. Pruitt, project officer, and LCDR D. G. Dickman, project attorney.

Discussion of Proposed Regulations

The existing regulations for this bridge, approved in 1984, require the draw to open on signal if at least three hours advance notice is given. VHF radiotelephone communication is maintained at the dispatcher's office in Savannah, Georgia. The bridge owner, CSX Transportation, has advised that the speed of rail traffic can be safely increased from 40 MPH to 70 MPH if they are allowed to remove the existing miter rails and install straight rails on the swing span. CSX Transportation has requested that the current regulations be amended to require 48 hours advance notice to remove these straight rails in order to open the bridge. There are eight scheduled trains across this bridge daily. The bridge logs indicate that the draw was not opened in 1984 or 1985. The draw was opened for the passage of seven vessels in 1986, one in 1987, two in 1988 and two in 1989. Based on these data, the Coast Guard proposes to change the existing schedule to require the bridge to open if at least 48 hours advance notice is given. VHF radiotelephone communication will be maintained at the dispatcher's office in Savannah, GA. This proposal also amends the current regulations to reflect that the new owner of the bridge is CSX Transportation instead of Seaboard System.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge seldom opens and the proposed rule only increases the advance notice required for navigation to arrange for an opening of the bridge for vessel traffic. Therefore, since the proposed change will have minimal economic impact upon waterway users, an economic evaluation has not been prepared. Since the economic impact of the proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 USC 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.371(c) is revised to read as follows:

§ 117.371 Savannah River.

* * * * *

(c) The draw of the CSX Transportation railroad bridge, mile 60.9, near Clyo, Georgia, shall open on signal if at least 48 hours advance notice is given. Openings can be arranged by contacting CSX Transportation on Channel 16 VHF or by telephone at (912)-232-1826. VHF radiotelephone communications will be maintained at the dispatcher's office in Savannah, Georgia.

* * * * *

Dated: April 10, 1990.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 90-9641 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE**39 CFR Part 111****Postage Deficiency; Special Bulk Third-Class Mailings**

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Domestic Mail Manual to provide that after a final determination of a postage deficiency on a bulk mailing at First-, third-, or fourth-class rates, the Postal Service would apply any funds the mailer may have in an advance deposit postage account or may subsequently pay into such an account to cover the deficiency. Postage on subsequent bulk mailings bearing permit imprints would not be considered prepaid in full, and these mailings would not be accepted as fully prepaid, until both the deficiency and the postage for the mailings have been paid in full.

DATES: Comments must be received on or before June 1, 1990.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday, in room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268-5188.

SUPPLEMENTARY INFORMATION: Postal regulations generally require that postage be fully prepaid at the time mail matter is mailed. Proof of payment can be shown by affixing stamps or postage meter strips, by imprinting the appropriate postage meter indicia directly on the pieces, or by using a permit imprint. For matter bearing permit imprints, postage is required to be paid in full from an advance deposit account. For permit imprint mailings at bulk First-, third-, and fourth-class rates, the Postal Service calculates the amount of postage due from figures provided by the mailer on the appropriate mailing statement, PS Form 3602, *Statement of Mailing with Permit Imprints*, and PS Form 3605, *Statement of Mailing—Bulk Zone Rates*, and deducts that amount from the mailer's advance deposit account.

In the course of its revenue protection efforts, the Postal Service from time to time identifies mailings of bulk matter, which after a thorough review, are determined under the applicable regulations to have been ineligible for the rate claimed.

Such mailings include, but are not limited to, those for which checks accepted in payment of postage have been returned for insufficient funds, and those which are found upon subsequent investigation to have violated the cooperative mailing restrictions of § 625.5, Domestic Mail Manual. When such a determination is made, the Postal Service notifies the mailer of the deficiency and seeks to collect the amount due. A mailer is entitled to appeal any decision assessing a revenue deficiency to a higher administrative level in accordance with DMM 148.

Unfortunately, in a sufficient number of cases to cause concern, mailers have not paid assessed postage deficiencies after exhausting their right of appeal to a higher administrative level. In such cases, the collection of funds due to the Postal Service is unreasonably delayed and the Postal Service incurs additional administrative expenses. In some instances, the Postal Service must resort

to litigation to collect the amounts due. The proposed provisions will speed the collection of funds due to the Postal Service by allowing the amount due to be deducted from any advance deposit account the mailer maintains to pay postage on bulk permit imprint mailings. Payments to such an account by or on behalf of the mailer will be applied to the deficiency until it is paid in full.

Although exempt by 39 U.S.C. 410(a) from the requirements of the Administrative Procedure Act regarding proposed rulemaking, 5 U.S.C. 553 (b), (c), the Postal Service invites public comments on the following proposed revisions of parts 145 and 148 of the DMM, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 148—REVENUE DEFICIENCIES

2. In part 148, add new § 148.3 to read as follows:

§ 148.3 Collection of Revenue Deficiencies.

After a final decision has been made regarding a revenue deficiency incurred on a bulk mailing at First-, third-, or fourth-class rates, the mailer will be given a grace period of 30 days in which to pay the deficiency. If any part of the deficiency remains unpaid at the end of 30 days, any funds in the mailer's advance deposit account and any subsequent payments to such an account by or on behalf of the mailer will be applied to the deficiency until the deficiency is paid in full. Postage on subsequent bulk permit imprint mailings will not be considered to be prepaid in full, and such bulk mailings by or on behalf of the mailer will not be accepted as fully prepaid, until the deficiency has been paid in full.

PART 625—ADDITIONAL CONDITIONS FOR SPECIAL BULK RATES ELIGIBILITY

3. In part 625, add new § 625.53 to read as follows:

§ 625.53 Revenue deficiencies.

Revenue deficiencies for cooperative mailings in violation of DMM §§ 625.51 or 625.52 are to be assessed and

collected in accordance with the provisions of 148.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-9666 Filed 4-21-90; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition to List the Rocky Mountain Population of the Trumpeter Swan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife. The petitioner did not present substantial information that listing the Rocky Mountain population of the trumpeter swan (*Cygnus buccinator*) as threatened may be warranted.

DATES: The finding announced in this notice was approved on March 23, 1990.

ADDRESSES: Questions or comments concerning this finding should be sent to: Chief, Endangered Species and Environmental Contaminants, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above office at 134 Union Boulevard, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Olin E. Bray at the Denver address (303/236-7398 or FTS 776-7398).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published

promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

Petition: The Service has received and made a 90-day finding on the following petition:

A petition dated April 7, 1989, was received from the Idaho Chapter of The Wildlife Society on May 12, 1989. The petition requested the Service to list the Rocky Mountain population of the trumpeter swan as a threatened species. The petition defines the Rocky Mountain population as all known breeding flocks in the Greater Yellowstone area (the tri-State subpopulation), and in Alberta, British Columbia, Northwest Territories, southeastern Yukon, and Saskatchewan (the Interior Canada subpopulation).

Prior to settlement of North America by Europeans, the trumpeter swan was a migratory species that ranged across most of the United States and Canada. The species was extirpated from most of its historical range by about 1900. A remnant population of trumpeter swans survived in western Canada and the Greater Yellowstone area, and provided the nucleus to rebuild trumpeter swan numbers in North America. Trumpeter swan numbers have increased since restoration efforts for the species began earlier in the century. Most of the trumpeter swans in the Rocky Mountain population winter in the tri-State area. Surveys in February 1989, documented the highest number of trumpeter swans (approximately 1,750) on the wintering grounds since restoration efforts began.

The petition states that although population numbers have been increasing, the Rocky Mountain population of trumpeter swans is extremely vulnerable to severe declines, due in part, to its restricted winter distribution. A single event of disease or adverse environmental conditions at one or more of the limited number of wintering sites could result in severe population impacts. As evidence of the trumpeter swan's vulnerability, the petition documented the loss of at least 50 birds (carcasses collected) last winter presumably due to extremely cold weather and low water flows. Other threats listed in the petition included continued loss or curtailment of habitat due to inadequate water flows, human activity and loss of wetlands; inadequate regulatory mechanisms; and mortality from lead poisoning, powerline collisions, and accidental shootings.

Service Information: The Rocky Mountain population of trumpeter swans is believed to be distinct from other populations of trumpeter swans; the Pacific Coast population and the

interior population. There was some question as to whether the Rocky Mountain population was distinct from the Pacific Coast population, but there are no band return data or observations of collared birds to suggest interbreeding between the two populations (pers. comm.: Danny Bystrack, Rod King, and Carl Mitchell, U.S. Fish and Wildlife Service; Dave Moody, Wyoming Game and Fish Department).

Winter habitat is believed to be the limiting factor in Rocky Mountain population trumpeter swan restoration efforts (U.S. Fish and Wildlife Service 1984). Approximately 500 trumpeters (about 30 percent of the Rocky Mountain population) winter on the Henrys Fork of the Snake River (Henrys Fork) at or near Harriman State Park, Idaho. Insufficient water flows to maintain ice-free conditions during extremely cold weather have resulted in the loss of feeding areas for trumpeters. Hazing efforts during November and December of 1988 to move trumpeters away from Harriman State Park prior to extremely cold weather were unsuccessful. For reasons unknown at this time, trumpeters do not leave Harriman State Park and migrate to other wintering areas when the Henrys Fork freezes over. Therefore, the lack of sufficient flows results in the curtailment of important winter habitat.

Although not documented, the actual loss of trumpeters on the Henrys Fork in February 1989, is estimated to be as high as 200 birds (Carl Mitchell, pers. comm.). Even though the documented loss of birds at or near Harriman State Park was fairly low considering total population numbers, the estimated loss is approximately 11 percent of the population. Certain flocks appear to have endured much of that loss. The Grand Prairie flock, the largest Canadian flock in the population, had an estimated overwinter death rate of 48 percent this past winter, compared to an average rate of 24 percent (Rocky Mountain Population Trumpeter Swan Subcommittee).

Production levels for Rocky Mountain population trumpeters in Canada have been increasing in recent years. In 1989 following the previous winter's die off, the number of pairs in the Grand Prairie flock was 18 percent below 1988 levels, and the number of nests was 16 percent below 1988 levels. Production was below that in 1988, but above the 5-year average. Production levels were below average for Montana and Idaho (Rocky Mountain Population Trumpeter Swan Subcommittee), and slightly above average for Wyoming (Dave Moody, pers. comm.).

The congregation of approximately 30 percent of the population in a small area at Harriman State Park and large congregations at Red Rock Lakes National Wildlife Refuge and other wintering areas within the tri-State area leave the trumpeters vulnerable to disease.

Management efforts currently underway (U.S. Fish and Wildlife Service 1984) are attempting to expand trumpeter swan winter range within a 150-mile radius of the tri-State wintering area, and initial results appear promising. Successful range expansion could alleviate the need for continued emphasis on water flows at Harriman State Park. It would decrease the population's vulnerability to disease. Regions 1 and 6 of the Service are committed to increasing efforts to expand the winter range of the Rocky Mountain population of the trumpeter swan. The Refuges and Wildlife Divisions in both Regions have increased their range expansion programs. The program is currently progressing quite well, especially in Wyoming where the State has taken a very active role. However, range expansion is a long term process, and without a sufficient minimum flow in the Henrys Fork, curtailment of feeding areas at Harriman State Park will continue to be a threat to trumpeter swan winter habitat until range expansion efforts are completed.

To address the threat of insufficient minimum flows in the Henrys Fork to maintain the swans wintering there, a committee consisting of personnel from the Service, Bureau of Reclamation, Idaho Department of Fish and Game, and Idaho State University met to establish the minimum flow needed to maintain adequate winter habitat for swans on the Henrys Fork. They established a minimum flow figure of 500 cfs below the Buffalo River. Assuming an average flow of 200 cfs from the Buffalo River, 300 cfs would have to be released from Island Park Reservoir (on the Henrys Fork) to maintain the 500 cfs minimum flow.

Subsequent to the establishment of the 500 cfs minimum flow, the historic flow records for the past 16 years (1974-1989) at the Island Park gaging station were reviewed. This review showed that there was sufficient water to maintain the 500 cfs minimum flow during 6 to 16 years. During the other 10 years, additional water would have to have been released to maintain the 500 cfs. It is believed that sufficient water would have been available for purchase and thus released during most of those 10 years.

A review of the midwinter trumpeter swan survey results for the past 16 years show that the number of swans counted increased from 709 in 1974, to a high of 1,743 in 1989. Some of this increase is probably due to an increase in survey effort, but it is believed that during this period, the Rocky Mountain population has maintained an upward trend. At a meeting in January 1990, Service waterfowl biologists indicated that the effects of last winter's die off and lower production in 1989 will only be temporary and that the upward trend of the population should continue.

Now that the minimum flow level has been established, the Service has made a commitment to make every effort to purchase the necessary water during those winters when the minimum flow below the Buffalo River drops below 500 cfs. Since the Service is committed to try to purchase the necessary water to maintain a minimum flow of 500 cfs during the winter, it is believed that the major threat to the population has been alleviated. By removing this threat, it will provide the Service with the necessary time to expand the winter range of the species to where it is sufficiently widespread that a catastrophic event in any one part of the population's range will not threaten the existence of the population.

After review of the petition, accompanying documentation, references cited therein, and other information obtained, the Service found that the petition presented information insufficient to conclude that the requested action may be warranted.

References Cited

Rocky Mountain Population Trumpeter Swan Subcommittee. 1989. Report to the Pacific Flyway Study Committee. Idaho Department of Fish and Game. 2pp.

U.S. Fish and Wildlife Service. 1984. North American Management Plan for Trumpeter Swans. Prepared by the Trumpeter Swan Subcommittees for the Flyway Councils, Canadian Wildlife Service, and U.S. Fish and Wildlife Service. Office of Migratory Bird Management, Washington, DC 62pp.

Author

This notice was prepared by Olin E. Bray (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

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

Dated: April 19, 1990.

Bruce Blanchard,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-9664 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of the Silver Rice Rat for Listing as a Vertebrate Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a review period to receive information on the potential listing of the silver rice rat (known both as *Oryzomys argentatus* and *Oryzomys palustris natator*) as a threatened or endangered vertebrate population pursuant to the Endangered Species Act of 1973, as amended (Act). The silver rice rat was described as a species endemic to the lower Florida Keys, Monroe County, Florida, in 1978. Subsequent taxonomic revision of U.S. rice rats concluded that the silver rice rat did not merit specific or subspecific designation. In 1987, the Service rejected a petition to list the species because of the uncertainty concerning its taxonomic status. Subsequent legal challenge has raised the issue of whether or not the silver rice rat qualifies for listing as a vertebrate population as defined by the Act, regardless of its taxonomic rank. The Service solicits information and comments on potential listing of this animal as a vertebrate population, as well as comments on general standards that should be used to define vertebrate populations under the Act.

DATES: Comments from interested parties must be received by July 25, 1990.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley at the above address (904/791-2580; FTS 946-2580).

SUPPLEMENTARY INFORMATION: Background

The silver rice rat was described as a new species, *Oryzomys argentatus*, in 1978 by Drs. Numi Spitzer (now Goodyear) and James D. Lazell, Jr. (Spitzer and Lazell 1978). At that time, the rat was known only from a single site in a fresh water marsh on Cudjoe Key, in the lower Florida keys of Monroe County, Florida. The site was threatened by filling. Subsequently, it was learned that rice rates had been trapped on nearby Raccoon Key in 1976. On March 12, 1980, the Center for Action on Endangered Species petitioned the Service to list the silver rice rat as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). On July 14, 1980 (45 FR 47365), the Service published its acceptance of the petition, and 90-day finding that there was substantial evidence warranting a listing proposal.

The Service's Southeastern (Atlanta, Georgia) Regional Office (Region) believed that further status information should be obtained prior to proposing the silver rice rat for listing. Accordingly, a contract was let to Numi Spitzer in 1980 to survey other lower Florida Keys for the silver rice rat. She found the rat to occur on nine of the lower keys (Spitzer 1982). The Region contracted with Ms. Spitzer to carry out further status survey work in the middle and upper keys in 1983. She found that rice rats were absent from these keys (Goodyear 1984). The nearest mainland Florida populations of rice rats to the silver rice rat are apparently about 90 miles distant through the keys or 30 miles distant over water.

In 1986, Drs. Henry Setzer and Steven Humphrey of the Florida Museum of Natural History advised the Service's Jacksonville Field Office that their taxonomic work on U.S. rice rats, then in progress and subsequently published (Humphrey and Setzer 1989), indicated that the silver rice rat was not distinguishable from mainland Florida rice rats at either the specific or subspecific level. These authors believe that the silver rice rat is only a peripheral population of the *Oryzomys palustris natator*, a subspecies common in salt water and fresh water marshes throughout the Florida peninsula. Drs. Goodyear and Lazell had in the meantime (Goodyear and Lazell 1987) defended their view that the silver rice rat was a distinct species.

As a result of the Humphrey, Setzer finding, the Region requested that any decision on proposing the silver rice rat be delayed until the taxonomic issue could be resolved, and recommended

that a panel of Service zoologists be formed to review the taxonomic controversy. Three zoologists from the Service's Division of research were detailed to this task in July, 1986; their final report suggested that the population of rice rats from the lower keys were * * * "a weakly distinguished geographical variant of *O. palustris* that may be known as *O. palustris argentatus*." * * * They recommended that additional material, particularly adult males, be collected to assist in determining the taxonomic status of the silver rice rat. Based on the continuing taxonomic uncertainty concerning the silver rice rat, the Service rejected the listing petition on December 29, 1988 (53 FR 52748). On January 6, 1989 (54 FR 562), the Service placed the silver rice rat in category 3B in the animal notice of review, indicating that it was not a taxon that met the Act's definition of a species. Such entities are not current listing candidates, but future investigation can lead to reevaluation of their listing qualifications.

One issue raised in connection with this review is to determine if the silver rice rat qualifies for listing as a distinct population segment pursuant to section 3(15) of the Act, even if the rat is not a valid species or subspecies.

While the Service currently lacks specific policy defining the standards to be used in listing vertebrate populations, such listings have generally been used to protect: 1. Major portions of a species' range, or; 2. the U.S. population of a species which does not merit listing elsewhere in its range, or for which sufficient information is not available to list it elsewhere. The Service believes that these two situations clearly justify vertebrate population listings. There are numerous other biological situations, however, in which the application of this definition is less clear; the silver rice rat presents an example. Even if the silver

rice rat does not have subspecific standing, it does represent a peripheral, disjunct population segment which is isolated from other populations of the species. However, unlike currently listed vertebrate populations, it represents only a very small part of the distribution of the species. The Service recognizes that the conservation of biological species requires the maintenance of sufficient genetic variability, and of enough discrete populations, to allow the species to continue to adapt to changing environmental conditions over evolutionary time. At the same time, it is not practically possible to, and the Act is not intended to, protect every disjunct population in the range of an otherwise common vertebrate species. Disjunct, often isolated populations are typical of species at the edge of their range. At this time, the Service is interested in obtaining further information or recommendations concerning the Service's use of the vertebrate population listing mechanism, particularly with reference to situations like that of the silver rice rat.

The Service intends to promulgate a general and uniform policy for determining when an isolated population constitutes a distinct population segment within the meaning of the Act. The Service will review the status of the silver rice rat in accord with the information and comments received pursuant to this Notice of Review and in accord with such policy to the degree possible. Pending the outcome of the silver rice rat review, the January 6, 1989, decision placing the silver rice rat in Category 3B is rescinded, and it will be continued as "warranted but precluded" until conclusion of this review.

Public Comments Solicited

The Service solicits comments and information from interested parties and the public on the taxonomic status of the

silver rice rat, and on standards or guidelines that might be used to define vertebrate populations eligible for protection under the Act. Any substantive information received will be considered in developing Service policy with regard to listing vertebrate populations pursuant to the Act.

References Cited

- Goodyear, N.C. 1984. Final report on the distribution, habitat, and status of the silver rice rat *Oryzomys argentatus*. Unpub. report to U.S. Fish and Wildlife Service, Jacksonville, Florida. 59 pp.
- Goodyear, N.C. and J.D. Lazell, Jr. 1987. Relationships of the silver rice rat *Oryzomys argentatus* (Rodentia:Muridae). Postilla 198:1-7.
- Humphrey, S.R. and H.W. Setzer. 1989. Geographic variation and taxonomic revision of rice rats (*Oryzomys palustris* and *O. argentatus*) of the United States. *J. Mammalogy* 70(3):557-570.
- Spitzer, N.C. 1982. Silver rice rat study—1981-1982. Unpub. report to U.S. Fish and Wildlife Service, Jacksonville, Florida. 7 pp.
- Spitzer, N.C. and J.D. Lazell, Jr. 1978. A new rice rat (Genus *Oryzomys*) from Florida's lower keys. *J. Mammalogy* 59:789-762.

Author

The primary author of this notice is Dr. Michael M. Bentzien (see Addresses section above).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1543).

List of Subjects in 50 CFR Part 17

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

Dated: April 18, 1990.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 90-9665 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 55, No. 81

Thursday, April 26, 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

Forms Under Review by Office of Management and Budget

April 20, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

New Collection

- Farmers Home Administration
Survey of Guaranteed Farm Loan Lenders
One time
Businesses or other for-profit; Small businesses or organizations; 302 responses; 151 hours; not applicable under 3504(h)

Jack Holston, 382-9736

- Forest Service
Wilderness Visitor Conflict Analysis
On occasion

Individuals or households; 750 responses; 333 hours; not applicable under 3504(h)

Dr. Alan E. Watson, (406) 721-5694

- Agricultural Cooperative Service
Cooperative Employee Benefits: Middle to Upper Level Management and Sales/Field Representatives

Every 5 years

Individuals or households; Non-profit institutions; Small businesses or organizations; 285 responses; 214 hours; not applicable under 3504(h)

Beverly L. Rotan, (202) 653-6855

Extension

- Forest Service
State and Private Forestry
Accomplishment Reporting FS-3100-8,
3200-6, 3400-5, 3500-5, 3600-2

Annually

289 responses; 557 hours; not applicable under 3504(h)

Pam Godsey, (202) 382-9043

- Animal and Plant Health Inspection Service

Application/Certification Purebred Animals Imported for Breeding
Form 17-338

On occasion

Farms; 300 responses; 75 hours; not applicable under 3504(h)

Dr. Samuel Richeson, (301) 436-8423

- Food and Nutrition Service
Status of Claims Against Households
FNS-209

On occasion; Quarterly

Individuals or households; State or local governments; 53 responses; 0 hours; not applicable under 3504(h)

Robert Johnston, (703) 756-3385

Revision

- Agricultural Marketing Service
Reporting & Recordkeeping
Requirements under Regulations (other than the Rules of Practice) under the Perishable Agricultural Commodities Act FV-211, FV-231 (Part 2)

Recordkeeping; On occasion; Annually
Businesses or other for-profit; 89,200 responses; 168,216 hours; not applicable under 3504(h)

John D. Flanagan, (202) 447-2195

- Agricultural Marketing Service
Lettuce Grown in the Lower Rio Grande Valley in South Texas: Marketing Order 971

On occasion; Annually

Farms; Businesses or other for-profit; 157 responses; 21 hours; not applicable under 3504(h)

Richard Schultz, (202) 475-3892

- Food and Nutrition Service
Integrated Quality Control Review—Worksheet FNS-380

Individuals or households; State or local governments; 68,202 responses; 615,428 hours; not applicable under 3504(h)

Charlene L. Simmons, (703) 756-3472

- Agricultural Marketing Service
Almonds Grown in California; Marketing Order 981

On occasion; Monthly; Semi-Monthly; Recordkeeping

Businesses or other for-profit; 13,277 responses; 6,252 hours; not applicable under 3504(h)

Richard Schultz, (202) 475-3892

- Food and Nutrition Service
Claim for Reimbursement
FNS-806

Monthly

Non-Profit institutions; 1,740 responses; 1,160 hours; not applicable under 3504(h)

Toni F. Winchester, (703) 756-3870

- Food and Nutrition Service
7 CFR Part 245—Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Reporting/Recordkeeping

Annually; Biennially; Other; Triennial; Recordkeeping

State or local governments; Businesses or other for-profit; Non-profit institutions; 5,218,285 responses; 796,082 hours; not applicable under 3504(h)

Marian Stroud, (703) 756-3600.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90-9701 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Bunker Salvage, Tahoe National Forest, Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for proposed salvage and fuels

treatment of insect killed and infested trees in three areas on the Downieville Ranger District, Tahoe National Forest that were considered in roadless area reviews (RARE I or II), but released for nonwilderness uses in the California Wilderness Act of 1984. These areas are the West Yuba (RARE II # 5172), East Yuba (RARE II # 5264), and Middle Yuba (considered in RARE I only). The preferred alternative in the Tahoe National Forest Land and Resource Management Plan EIS allocates these areas for multiple use management. The project areas are located within portions of T.18N., R.10 & 11E., T.19N., R.10, 11, & 12E., T.20N., R. 10 & 11E., T.21N., R.10 & 11E. MDB&M., in the vicinities of Bunker Hill and the Middle Yuba River.

As a result of the past four years of drought, many of the trees throughout the Downieville Ranger District are dead, dying, or under attack by a variety of insects. One of the effects of this significant mortality has been the creation of an extremely heavy fuel-loading condition over a large area.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by May 18, 1990.

ADDRESSES: Written comments concerning the project should be directed to J. Thomas Millard, District Ranger, Downieville Ranger District, North Yuba Ranger Station, 15924 Hwy 49, Camptonville, CA 95922.

FOR FURTHER INFORMATION CONTACT: Larry Svalberg, Supervisory Forester, Downieville Ranger District, Camptonville, CA 95922, telephone (916) 288-3231.

SUPPLEMENTARY INFORMATION: In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives for treatment of the insect-killed and infested trees that address the issues developed for these sites. One of the alternatives will be no treatment. Other alternatives will consider differing levels of salvaging, new road construction, and fuel treatment, and use of different logging systems to conduct the salvage operations.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local

agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

6. Determining potential cooperating agencies and task assignments.

The following is a list of issues identified through initial scoping:

(1) Effect of salvaging on the character of areas formerly considered in roadless area reviews (RARE I or II). The character of these areas may change with logging and new road construction.

(2) Identify and protect threatened, endangered, or sensitive species, including conducting an analysis of the effects of salvaging or not salvaging in Spotted Owl Habitat Areas (SOHAs).

(3) Analyze the direct and cumulative impacts to water quality from salvage operations, and assess potential effects to watersheds from different fire intensities resulting from different fuel-loading levels.

(4) Maintenance of biodiversity and old-growth forest structure.

(5) Effect of salvaging and removal or burning of submerchantable material as slash treatment on long-term site productivity, especially on low productive sites (less than 70 to 80 ft³/yrs).

(6) Utilization of dead timber in an expedient manner to minimize losses from the quick deterioration of insect-killed true fir and other species, and analyze the economic effect potential volume loss would have on local industry and receipts to Sierra County and the U.S. Treasury.

(7) Concern related to the risks and impacts associated with a major fire through these areas containing listed access and heavily increased fuel loadings.

(8) Concern for public safety from increased frequency of falling snags.

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by the decision, will be solicited to identify other significant issues. Public participation has been previously solicited through mailing

letters to mining claim owners, private land owners, and special use permittees within the Downieville Ranger District boundaries; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, county supervisors, and environmental groups. Continued participation will be emphasized through individual contacts. No public meetings are scheduled.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 15, 1990. A 45-day comment period will follow publication of a notice of availability of the draft EIS in the *Federal Register*. The comments received will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is expected to be completed by about August 15, 1990, and documented in a Record of Decision. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council On Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

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 must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 533 (1978). Second, Federal court decisions have established that environmental objections that could have been raised at the draft stage may be waived or dismissed by the courts if not raised until after completion of the final EIS, *Wisconsin Hverages, Inc. v. Harris*, 490 F Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested participate by the close of the 45-day comment period on the draft EIS, so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

The responsible official, who is the Tahoe National Forest Supervisor, will document the decision and reasons for the decision in the Record of Decision.

Dated: April 19, 1990.

Frank J. Waldo,

Acting Forest Supervisor.

[FR Doc. 90-9667 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Flag Creek Drop Farm Irrigation RC&D Measure, Colorado

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Flag Creek Drop Farm Irrigation RC&D Measure, Rio Blanco County, Colorado.

FOR FURTHER INFORMATION CONTACT:

Mr. Sheldon G. Boone, State Conservationist, USDA—Soil Conservation Service, 655 Parfet Street, room E200C, Lakewood, Colorado 80215-5517, telephone (303) 236-2886.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this measure.

Flag Creek Drop Farm Irrigation RC&D Measure, Colorado Notice of Finding of No Significant Impact

This farm irrigation measure concerns a plan to replace the existing pipe drop and flume over Flag Creek with concrete pipe drop and concrete syphon under Flag Creek. Concrete inlet and outlet structures, capable of handling irrigation water will also be installed.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single-copy request. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone. No Administrative action on implementation of the proposal will be taken until 30 days

after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: April 20, 1990.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 90-9668 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-15-M

Turkey Creek Watershed, Georgia

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Turkey Creek Watershed, Dooly and Houston Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Hershel R. Read, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404-546-2272.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Hershel R. Read, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns are reduced soil productivity from sheet, rill, and ephemeral gully erosion affecting cropland and offsite sediment damage. The planned works of improvement include cost sharing and accelerated technical assistance to increase the application of land treatment measures such as terraces, grassed waterways, water and sediment control basins, diversions, contouring, underground outlets, crop residue use, and land use conversion.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various

Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Hershel R. Read.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 16, 1990.

Hershel R. Read,

State Conservationist.

[FR Doc. 90-9669 Filed 4-25-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on May 2-3, 1990, at the Dutch Inn by the Sea, telephone: (401-789-9341), Galilee, RI. The Council will begin its meeting at 10 a.m., on May 2. It will reconvene on May 3 at 9 a.m., and adjourn when agenda items have been completed.

On the morning of the first day, the Council will hear reports from the Herring Oversight Committee, followed in the afternoon by an update on reauthorization of the Magnuson Fishery Conservation and Management Act, and a Habitat Committee report.

On the second day, the Council will hear reports from the Groundfish, Lobster, Large Pelagics and Scallops Committees. In addition, pending oil spill legislation will be reviewed, and the Stimpson clam fishery will be discussed.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: April 20, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-9693 Filed 4-25-90; 8:45 am]

BILLING CODE 3510-22-M

Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, transition activities, budget status, the fellowship program, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business.

DATES: The announced meeting is scheduled during two days: Monday, May 21, 1990, 1-5 p.m. and Tuesday, May 22, 1990, 2-5 p.m.

ADDRESSES: Silver Spring Metro Center Building, 1335 East-West Highway, Conference Room #105, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic & Atmospheric Administration, 1335 East-West Highway, #5104, Silver Spring, Maryland 20910, (301) 427-2431.

SUPPLEMENTAL INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act. Pub. L. 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Monday, May 21, 1990—1-5 p.m.

Committee Reports
Law & Policy
New Technology
National Office
Agricultural Extension
Coastal Business Initiatives
Council of Sea Grant Directors
Fellows Program
NASULGC Marine Division Status
Regional Participation Report
Advisory Committee Network
Panel Member Status
Southern California Merge Update

Tuesday, May 22, 1990—2-5 p.m.

New Business
NOAA Update

Budget Update
Reauthorization Update
Special Focus & Strategic Marine
Research Initiative Update
Communications
Coastal Ocean Program Update
Advisory Committee Network
Site Visits
Post Doctoral Program Update.

The meeting will be open to the public.

Dated: April 20, 1990.

Alan R. Thomas,
Acting Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 90-9721 Filed 4-25-90; 8:45 am]

BILLING CODE 3510-12-M

Office of the Assistant Secretary and Commissioner of Patents and Trademarks**Public Advisory Committee for Trademark Affairs; Renewal**

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and after consultation with GSA, it has been determined that the renewal of the charter of the Public Advisory Committee for Trademark Affairs is in the public interest in connection with the performance of duties imposed on the Department by law.

SUPPLEMENTARY INFORMATION: The Committee was first established in September 1970, and is now being renewed. The renewal was signed on April 4, 1990. The Committee's purpose is to advise the Patent and Trademark Office concerning steps which can be taken to increase the efficiency and effectiveness of administration of the Trademark Act and to provide a continuing flow of knowledge from the private sector to the Government in the field of trademarks.

Subject to the approval of the Assistant Secretary and Commissioner of Patents and Trademarks, the Committee members will be drawn from the regular, associate, and supplementary membership of the United States Trademark Association. The membership is balanced and selected by the President of said association. The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Lynne Beresford, Committee Control

Officer, Office of the Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, DC 20231, telephone: (703) 557-7464, or Jan Jivatodi, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-4217.

Dated: April 13, 1990.

Harry F. Manbeck, Jr.,
Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-9733 Filed 4-25-90; 8:45 am]

BILLING CODE 3510-16-M

CONSUMER PRODUCT SAFETY COMMISSION**Privacy Act of 1974; Systems of Records**

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of changes to Appendices to the Consumer Product Safety Commission's Systems of Records.

SUMMARY: The Commission is amending the two appendices to its Privacy Act Systems of Records to reflect changes in Commission addresses and nomenclature, and to reflect the transfer of two records systems from the Office of Personnel Management to the Office of Government Ethics.

EFFECTIVE DATE: April 26, 1990.

ADDRESSES: Comments or suggestions may be sent to the Consumer Product Safety Commission, Washington, D.C. 20207.

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

SUPPLEMENTARY INFORMATION: Appendix I to the Commission's systems of records list the names and addresses of the Commission's regional offices. The currently correct names and addresses are as shown in this notice.

Appendix II is a listing of other agencies' government-wide systems of records which may contain information about Commission employees, and some of which may be physically located at the Commission. Two of these were the Office of Personnel Management's OPM/GOVT-4, Executive Branch Public Financial Records, and OPM/GOVT-8, Confidential Statements of Employment and Financial Interests. Appendix II is revised to show that these systems are now OGE/GOVT-1 and OGE/GOVT-2, as shown in the Office of Government

Ethics Federal Register notice at 55 FR 6327, February 22, 1990.

These revisions do not affect the Commission's own Privacy Act systems of records, and are thus effective immediately on April 26, 1990.

Dated: April 20, 1990.

Sadye E. Dunn,
Secretary.

Accordingly, the Consumer Product Safety Commission's systems of records are amended by revising Appendices I and II to read as follows:

Appendix I—Regional Office Addresses

Central Regional Center, 230 S. Dearborn Street, Room 2944, Chicago, Illinois 60604.

Eastern Regional Center, 6 World Trade Center, Vesey Street, Room 301, New York, New York 10048.

Western Regional Office, U.S. Customs House, 555 Battery Street, Room 415, San Francisco, California 94111.

Appendix II—Pertinent Record Systems of Other Agencies

Other Federal agencies maintain government-wide systems of records which may contain information about CPSC employees. Some of these records may be physically located at CPSC. These systems include:

1. Office of Personnel Management, OPM/GOVT-1, General Personnel Records (includes official personnel folders).
2. Office of Personnel Management, OPM/GOVT-2, Employee Performance File System Records.
3. Office of Personnel Management, OPM/GOVT-3, Adverse Action Records.
4. Office of Personnel Management, OPM/GOVT-5, Recruiting, Examining, and Placement Records.
5. Office of Personnel Management, OPM/GOVT-6, Personnel Research and Test Validation Records.
6. Office of Personnel Management, OPM/GOVT-7, Applicant Race, Sex, National Origin, and Disability Status Records.
7. Office of Personnel Management, OPM/GOVT-9, File on Position Classification Review Requests (Appeals) and Grade and Pay Retention Appeals.
8. Office of Government Ethics, OGE/GOVT-1, Executive Branch Public Financial Disclosure Reports (includes financial interest disclosure forms of CPSC employees subject to the Ethics in Government Act).
9. Office of Government Ethics, OGE/GOVT-2, Confidential Statements of Employment and Financial Interests (includes CPSC Form 219).
10. Federal Emergency Management Agency, FEMA/GOVT-1, Uniform Identification System for Federal Employees Performing Essential Duties During Emergencies.
11. Equal Employment Opportunity Commission, EEOC/GOVT-1, Equal Employment Opportunity Complaint Records and Appeal Records.
12. Merit System Protection Board, MSPB/GOVT-1, Appeal and Case Records.

13. General Services Administration, GSA/GOVT-3, Travel Charge Card Program.

[FR Doc. 90-9720 Filed 4-25-90; 8:45 am]

BILLING CODE 6355-01-M

Privacy Act of 1974; Announcement of System of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of System of Records.

DATES: Comments must be received on or before June 25, 1990.

ADDRESSES: Comments should be sent to the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

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

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission is establishing a system of records within its Office of the General Counsel to track the status of assignments made to its attorneys. The records will be used for management purposes within the Office of the General Counsel.

The system of records will become effective June 25, 1990, unless comments are received which justify a contrary determination.

The President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget have been notified of this system.

Dated: April 20, 1990.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

CPSC—9

SYSTEM NAME:

General Counsel Tracking System—CPSC-9.

SYSTEM LOCATION:

Office of the General Counsel, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, DC 20207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys working in the Office of the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Descriptions and dates of assignments; comments; starting and completion dates; due dates; names of attorneys to whom assignments are

given; names of divisions within the Office of the General Counsel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; Consumer Product Safety Act, 15 U.S.C. 2051 et seq.; 16 CFR 1000.14.

PURPOSE(S):

To manage the workflow in the Office of the General Counsel; to assure timely completion of assignments; to respond to queries from other units of the Consumer Product Safety Commission; to assist in evaluating attorney performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer database management system. Hard copy printouts of selected groups of records are made from time to time.

RETRIEVABILITY:

Records are retrievable by any field, including attorney name.

SAFEGUARDS:

Access to the records, and to fields within the records, is controlled by passwords. Records are accessible by all Office of the General Counsel staff, but not by others. Only supervisory staff may create records, assign or extend due dates, or enter completion dates.

RETENTION AND DISPOSAL:

Old records are purged from time to time, based on need for computer storage space.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, 5401 Westbard Avenue, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by the attorneys themselves and by supervisors.

[FR Doc. 90-9719 Filed 4-25-90; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE**National Advisory Panel of Education of Handicapped Dependents; Meeting**

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Assistant Secretary of Defense (Force Management & Personnel).

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Panel on the Education of handicapped Dependents. This notice also describes the functions of the Panel. Notice of this meeting is required under the National Advisory Act. This meeting is open to the public; however, due to space constraints, anyone wishing to attend should contact the Office of Dependents Schools (ODS) special education coordinator.

DATES: May 21-25, 1990.

ADDRESSES: DoDDS-Mediterranean regional office, Torrejon, Spain.

FOR FURTHER INFORMATION CONTACT: Mrs. Trudy Paul, Special Education Coordinator, DoDDS, 2461 Eisenhower Avenue, Alexander, Virginia 22331-1100 (202/325-7810).

SUPPLEMENTARY INFORMATION: The National Advisory Panel on the Education of Handicapped Dependents is established under section 613 of the Education for All Handicapped Children Act of 1975 (20 U.S.C. 1401, Public Law 94-142). The Panel is directed to: (1) Review information regarding improvements in services provided to handicapped students in DoDDS; (2) receive and consider the views of various parents, students, handicapped individuals, and professional groups; (3) review the findings of fact and decision of each impartial due process hearing; (4) assist in developing and reporting such information and evaluations as may aid DoDDS in the performance of its duties; (5) make recommendations based on program and operations information for changes in the budget, organization, and general management of the special education program, and in policy and procedure; (6) comment publicly on rules or standards regarding the education of handicapped children; and (7) submit an annual report of its activities and suggestions to the

Director, DoDDS, by July 31 of each year. The Panel will review the following areas: Educational Program Development plan for special education, administration, and budget.

Dated: April 20, 1990

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-9647 Filed 4-25-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary**DOD Advisory Group on Electron Devices; Meeting**

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 2 p.m., Wednesday, 9 May 1990.

ADDRESSES: The meeting will be held at the Naval Post Graduate School, Spanagel Hall, Room 101, Monterey, California.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended (5 U.S.C. app. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: April 20, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-9648 Filed 4-25-90; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974; System of Records Notices

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Deletion of one and addition of two new systems of records notices for public comment..

SUMMARY: The Office of the Secretary of Defense proposes to delete one record system and add two new record systems to its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The deletion and proposed new record systems notices are set forth below.

DATES: The deletion will be effective May 29, 1990. The new systems will be effective May 29, 1990, unless comments are received which result in a contrary determination.

ADDRESS: Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155. Telephone (202) 697-2501 or Autovon 227-2501.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the *Federal Register* as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
50 FR 47087, Nov. 14, 1985
51 FR 17508, May 13, 1986
51 FR 11807, Apr. 7, 1986
51 FR 17508, May 13, 1986
51 FR 44668, Dec. 11, 1986
52 FR 23334, June 19, 1987
53 FR 15868, May 4, 1988
53 FR 27894, July 25, 1988
54 FR 33756, Aug. 16, 1989
54 FR 43314, Oct. 24, 1989

The proposed deletion is not within the purview of the provisions of 5 U.S.C. 552a(r), which requires the submission of a new or altered system report. The new system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on April 17, 1990, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal

Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 20, 1990.

Deletion

E DARPA 001

SYSTEM NAME:

Travel File (50 FR 22332, May 29, 1985).

REASON:

This system is being incorporated into DWHS B44.0, entitled, "OSD Travel File".

DWHS B44.0

SYSTEM NAME:

OSD Travel File.

SYSTEM LOCATION:

Primary location is maintained at Washington Headquarters Services, Directorate for Budget and Finance, Room 3B287, Pentagon, Washington, DC 20301-1155.

Secondary location sites are the Joint Staff (JS), DIRM (Services Division) Travel Section, Room 2C936, Pentagon, Washington, DC 20318-9300; the Department of Defense Dependents Schools (DoDDS), ATTN: Fiscal Division, 2461 Eisenhower Avenue, Alexandria, VA 22331-1100; and the Defense Advanced Research Projects Agency (DARPA), ATTN: RMO (Travel), 1400 Wilson Boulevard, Arlington, VA 22209-2308.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and military personnel assigned to the Office of the Secretary of Defense, the Joint Staff, Washington Headquarters Services, DoDDS, DARPA, American Forces Information Service, U.S. Court of Military Appeals, Defense Medical Support Activity, Defense Security Assistance Agency, Defense Legal Services Agency, and Defense Technology Security Administration.

Also covered are dependents of employees and personnel, former employees, other government agency employees authorized by law to travel at government expense, and certain non-government personnel traveling on Invitational Travel Orders on official agency business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to official travel of individuals, including travel orders, per

diem vouchers, transportation requests, travel itinerary, and supporting documentation. Records contain individuals name, SSN, employing office name and telephone number, and home telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2105, 2106, 5561, 5564, 5701-5708, 5721-5730, 5742; 50 U.S.C. 2160; and Executive Order 9397.

PURPOSE(S):

To maintain an official travel record authorization and payment file system. Provides management information for control of travel expenditures and supports documentation requirements for official travel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the Office of the Secretary of Defense "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic data is maintained on a networked computer system with access safeguards.

RETRIEVABILITY:

Files are retrieved by name of individual, Social Security Number, and employing organization.

SAFEGUARDS:

Facilities where the systems are maintained are locked when not occupied. Paper records are kept in filing cabinets and other storage places which are locked when office is not occupied.

Access to computer records is controlled by a user identification and password system. Personnel having access are limited to those having a need-to-know who have been trained in handling Privacy Act information.

RETENTION AND DISPOSAL:

Records are retained for two years and then retired to the Washington National Records Center (WNRC). After six years and three months records are destroyed at WNRC.

Computer files are retained for ten years and then deleted from the system.

SYSTEM MANAGER AND ADDRESS:

Director, Budget and Finance, Washington Headquarters Services,

Room 3B259, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Budget and Finance, Washington Headquarters Services, Room 3B259, Pentagon, Washington, DC 20301-1155.

The individual should make reference to the office where assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. SSN should be included in the inquiry for positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Director, Budget and Finance, Washington Headquarters Services, Room 3B259, Pentagon, Washington, DC 20301-1155.

The individual should make reference to the office where assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. SSN should be included in the request for positive identification.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources are the travelling individuals or their agents and vendors of travel and related services.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DWHS B45.0

SYSTEM NAME:

DoD Salary Offset Suspense Control Records.

SYSTEM LOCATION:

Washington Headquarters Services, Directorate for Budget and Finance, Room 3B287, Pentagon, Washington, DC 20301-1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees assigned to the Office of the Secretary of Defense

(OSD), the Joint Staff, DoD Agencies, and OSD Field Activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original debt amount records received from Defense Manpower Data Center (DMDC) identifying individuals by name, Social Security Number, and employing agency; and Report of Salary Offset for Debt Collection (Report Control Symbol DD-COMP(M&Q)1659) submissions of employing activities, and reflecting agency finance office actions relevant to individuals identified in the original debt amount records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711, "Federal Claims Collection Act of 1966"; 31 U.S.C. 5512-5514; 4 CFR chapter II, "Federal Claims Collection Standards (General Accounting Office—Department of Justice)"; 32 CFR part 90, "Collection of Indebtedness Due the United States (DoD)"; Pub. L. 97-365, "The Debt Collection Act of 1982"; and Executive Order 9397.

PURPOSE(S):

To maintain a suspense file of requests from non-DoD Agencies through Defense Manpower Data Center (DMDC) for administrative or salary offsets of civilian employees assigned to the Office of the Secretary of Defense, the Joint Staff, DoD Agencies, and OSD Field Activities. The system permits tracking of requests that have not resulted in salary offsets by the employing activity. The system also compiles salary offset information to facilitate generation of compliance reports to DMDC.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

See the Office of the Secretary of Defense (OSD) "Blanket Routine Uses" set forth at the beginning of the agency's compilation of record system notices.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act of 1966 (31 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in the file folders in file cabinets that are locked when not in use. Electronic data is maintained on a

mainframe computer system located in a secure computer facility.

RETRIEVABILITY:

Files are retrieved by name of individual, Social Security Number, and activity by whom the individual is employed.

SAFEGUARDS:

Facilities where the systems are maintained are locked when not occupied. Paper records are kept in filing cabinets and other storage places which are locked when office is not occupied.

Access to computer records is controlled by a user identification and password system. Personnel having access are limited to those having a need-to-know who have been trained in handling Privacy Act information.

RETENTION AND DISPOSAL:

Paper records: Requests for offset are retained for six years after the close of the initial fiscal year in which the original request for salary offset is received and are then destroyed. Offset reports are retained for two years after the close of the fiscal year in which the offset is reported to DMDC and then destroyed. Computer files are retained for ten years after the close of the fiscal year in which the amount has been collected in full and are then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Budget and Finance, Washington Headquarters Services, Room 3B287, Pentagon, Washington, DC 20301-1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Director, Budget and Finance, Washington Headquarters Services, ATTN: IPMD, Room 3B287, Pentagon, Washington, DC 20301-1155.

The individual should furnish their full name, Social Security Number, and name of the DoD agency/activity and office where assigned.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Director, Budget and Finance, Washington Headquarters Services, ATTN: IPMD, Room 3B287, Pentagon, Washington, DC 20301-1155.

The individual should furnish their full name, Social Security Number, and name of the DoD agency/activity and office where assigned.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial OSD determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DMDC requests for administrative or salary offset and reports from DoD agencies and activities noting action taken to effect administrative or salary offset.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90-9646 Filed 4-25-90; 8:45 am]

BILLING CODE 3910-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

April 9, 1990.

The USAF Scientific Advisory Board Division Advisory Group (AG) for Aeronautical Systems Division (ASD) will meet on 16-17 May 1990 from 8 a.m. to 5 p.m. at Wright-Patterson AFB, OH.

The purpose of this meeting is to receive classified briefings and hold classified discussions on selected Air Force Programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,
Air Force Federal Register Liaison Officer.

[FR Doc. 90-9670 Filed 4-25-90; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

April 20, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Post Deployment Software Support will meet on May 21-22, 1990, from 8 a.m. to 5 p.m. at Ogden Air Logistics Center (OO-ALC), Hill AFB, UT.

The purpose of this meeting will be to review Air Force post deployment software support (PDSS) capabilities and to make recommendations in these areas: Actions that AFLC might take to improve the PDSS process, technology

that AFLC might evaluate for possible adoption, and strategy that AFLC might follow to develop and implement a mechanism for estimating cost and schedule. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code; specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-9671 Filed 4-25-90; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

April 19, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Space Power Technology will meet on May 30-31, 1990, from 8 a.m. to 5 p.m. at Headquarters, United States Air Force, Washington, DC.

The purpose of this meeting will be to review Air Force, DOE, SDIO, DARPA, NASA and related industry IR&D space power technology development efforts and to recommend the direction(s) of Air Force investment in this technology area. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-9672 Filed 4-25-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Intent To Repay to California State Department of Education Funds Recovered as Result of Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e (1982), the U.S. Secretary of Education (Secretary) intends to repay to the California State

Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of the Compton Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All written comments must be received on or before May 28, 1990.

ADDRESSES: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732-4692.

SUPPLEMENTARY INFORMATION:

A. Background

In August 1987, the Department recovered \$141,518 from the SEA following a final audit determination issued against the LEA by the SEA. The SEA conducted the review of fiscal years (FYs) 1979 and 1982 underlying this final audit determination in response to directions from the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) in a final determination letter (FDL) dated July 8, 1983. While that FDL was primarily directed at FYs 1980 and 1981, the Assistant Secretary directed the SEA to review similar expenditures incurred by the LEA during FYs 1979 and 1982. The claims involved the administration of title I of the Elementary and Secondary Education Act of 1965 (title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, during FYs 1979 and 1982, the LEA did not satisfy the title I requirements in 45 CFR 116.36 and 34 CFR 200.75 that training must be directly related to title I services performed and competencies required, and that title I funds must be used only to meet the purposes of the title I program. The LEA expended title I funds for conferences that provided training unrelated to title I as well as for field trips that did not meet the special needs of title I children. Conference costs that were imprudent and unnecessary were charged to title I in violation of 45 CFR 116a.22(b)(4)(ii),

34 CFR 200.71, and 45 CFR part 100, appendix C, part I(C)(1). The LEA also failed to meet the requirements in 45 CFR, part 74, appendix B, parts 100-100d and appendix C, part II, B.28 that mileage costs were to be computed on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or a combination of the two. The LEA paid travel allowances to staff members based on a monthly flat rate established for position titles in the early 1970s. No current schedule or analysis was provided to substantiate any relationship between the miles traveled and the mileage payments.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of \$106,138, which is 75 percent of the \$141,518 the SEA repaid for unallowable costs for FYs 1979 and 1982, and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as

amended (chapter 1). The SEA's request pertains only to the funds the SEA returned in August 1987 following the final determination that title I funds were improperly expended in FYs 1979 and 1982.

According to the plan, the LEA would use the grantback funds to provide a literature enrichment program and a counseling program to supplement the chapter 1 program funded from the regular chapter 1 entitlement for school year 1989-90. Schoolwide projects and nonpublic school children were chosen to participate in the grantback program on the basis of students' low performance on the California Achievement Test. The regular schoolwide projects provide in-class instructional aides and resource teachers in language arts and mathematics. Nonpublic school students receive chapter 1 services in language arts and mathematics at nearby public school sites.

The literature enrichment program would provide additional reinforcement in language arts to chapter 1 students at eight public school sites and two sites where nonpublic school students receive chapter 1 services. Low-achieving students would learn to enjoy literature through effective presentations of entire pieces of literature that are required by the curriculum. Thirty aides and 35 teachers would serve as oral English role models during storytelling sessions conducted two hours a week during school hours and after school for approximately 600 chapter 1 students in grades K-5. On selected days, two-hour literature based video sessions would be offered to chapter 1 students who learn more effectively through visual than auditory means. Thirty instructional aides, 4 resource teachers, 24 teachers, and selected fourth and fifth grade chapter 1 students would receive 24 hours of storytelling training prior to implementing the storytelling sessions.

The counseling program would consist of group counseling sessions for fourth and fifth grade chapter 1 students, individual counseling for selected chapter 1 students in grades K-5, and 12 parent enhancement sessions for parents of chapter 1 students in grades K-5. A licensed clinical social worker from a United Way Agency would serve approximately 690 students from 4 public schools and 1 nonpublic school. Approximately 65 parents would attend 12 parent sessions.

Of the \$106,138 grantback payment, \$50,682 would be used in the literature enrichment program for salaries for teachers, resource teachers, and instructional aides, and for minimal supplies. The coordinator of language

arts and four previously trained resource teachers would provide instruction for the training sessions at no charge to the grantback program. The remainder of the funds, \$55,456, would be used in the counseling component for the social worker's salary and for supplies.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. The grantback award would be in the amount of \$106,138, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the SEA's final audit determination that title I funds were improperly expended in FYs 1979 and 1982.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to

the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1990, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1991, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: April 19, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-9649 Filed 4-25-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF90-128-000]

Altresco Lynn, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 19, 1990.

On April 5, 1990, Altresco Lynn, Inc., of 600 South Cherry Street, Suite 1200, Denver, Colorado 80222, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Lynn, Massachusetts. The facility will consist of two combustion turbine generators, two heat recovery steam generators and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized for plant process operations in General Electric Company's Lynn, Massachusetts facility. The maximum net electric

power production capacity of the facility will be 245,515 kW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin March 1991.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining to 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 80-9633 Filed 4-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF90-130-000]

**National Starch & Chemical Co.;
Application for Commission
Certification of Qualifying Status of a
Cogeneration Facility**

April 19, 1990.

On April 9, 1990, National Starch & Chemical Company, of 10 Funderne Avenue, Bridgewater, New Jersey 08807, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bridgewater Township, New Jersey. The facility will consist of a reciprocating engine generator and an existing boiler. Thermal energy recovered from the facility will be utilized for space heating and to generate steam in an existing boiler. The electric power production capacity of the facility will be 650 kW. The primary source of energy will be natural gas. Construction of the facility is scheduled to begin May 1, 1990.

Any person desiring to be heard or objection to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC

20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-9634 Filed 4-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-1170-000 et al.]

**Tennessee Gas Pipeline Co. et al.;
Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP90-1170-000]

April 16, 1990.

Take notice that on April 10, 1990, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas on an interruptible basis, under its blanket certificate issued in Docket No. CP87-115-000 on behalf of Acacia Gas Corporation (Acacia), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to transport up to a maximum of 25,000 Dt of natural gas for Acacia from receipt points located Offshore Louisiana, Offshore Texas, LA, TX, MI, AL, and WV, to numerous interconnections along Tennessee's system for redelivery to certain local distribution companies and interstate pipelines. The ultimate delivery points are located in multiple states, it is explained. Tennessee estimates the average daily quantity and the annual quantity of natural gas transported to be 25,000 Dt and 9,125,000 Dt, respectively, and that the service commenced March 1, 1990, as reported in Docket No. ST90-2482. Tennessee also states that no new facilities are to be constructed.

Comment date: May 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Eastern Shore Natural Gas Company

[Docket No. CP90-872-000]

April 16, 1990.

Take notice that on February 28, 1990, as supplemented April 12, 1990, Eastern Shore Natural Gas Company (Eastern Shore) P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP90-872-000, a request, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate three sales taps, under the authorization issued in Docket No. CP83-40-000 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.

Eastern Shore requests authority for the construction and operation of one sales tap to serve Delaware Division of Chesapeake Utilities Corporation (Delaware Division), a local distribution company. Eastern Shore was originally granted authority to serve Delaware Division on November 29, 1957, in Docket No. G-12200, 18 FPC 710. The current level of service was authorized by the Commission on July 23, 1985, in Docket Nos. CP85-89-000, *et al.* (32 FERC ¶ 61098). Eastern Shore indicates that its CD-1 Rate Schedule would apply to the sales service provided through this sales tap.

Eastern Shore alleges that the sales tap would be located on Route 13 in Seaford, Delaware. The gas is to be utilized by Delaware Division would be for system supply. The proposed quantity of gas to be delivered through this tap is on average, 300 MMBtu per day, or 109,500 MMBtu per year. The estimated peak day of 1,000 MMBtu is within Delaware Division's current peak day supply of contract demand, storage, and peak shaving; thus it would not affect Delaware Division's load requirements from Eastern Shore on a design day. It is alleged that this sales tap would strengthen Delaware Division's Seaford distribution system. The quantities of gas projected to be delivered through this tap would otherwise be delivered through one of the existing sales taps between Eastern Shore and Delaware Division.

Eastern Shore also requests authority for the construction and operation of a sales tap for Citizens Gas Division of Chesapeake Utilities Corporation (Citizens Gas Division), a local distribution company. Eastern Shore was originally granted authority to serve Citizens Gas Division in Docket No. G-12200 and the current level of service was authorized by the Commission in Docket Nos. CP85-89-000, *et al.*

This sales tap for Citizens Gas Division would be located near University Avenue in Federalsburg, Maryland. It is alleged that the gas to be utilized by Citizens Gas Division would be for system supply and that Citizens Gas Division, at this time, plans to resell all of the gas to one industrial customer. The proposed quantity of gas to be delivered through this sales tap is, on average, 15 MMBtu per day or 5,475 MMBtu per year. It is asserted that the quantities of natural gas delivered would be within the certificated entitlements of Citizens Gas Division. The estimated peak day of 40 MMBtu is within Citizens Gas Division's current peak day supply of contract demand, storage, and peak shaving; thus it would not affect Citizens Gas Division's load requirements from Eastern Shore on a design day.

Eastern Shore also requests authority for the construction and operation of a sales tap for the City of Dover. Eastern Shore was originally granted authority to serve the City of Dover on December 20, 1961, in Docket No. CP62-32, 26 FPC 892. The current level of interruptible service entitlement was authorized in Docket Nos. CP-85-89-000, *et al.* It is alleged that because the sales service provided through this tap would be nonjurisdictional and interruptible, Eastern Shore's system wide design day load requirements would not be affected.

It is stated that the sales tap for the City of Dover would be located adjacent to New Burton Road in Dover, Delaware. It is alleged that the gas to be utilized by the City of Dover is for electric power generations during peak periods in the summer months. The proposed quantity of gas to be delivered through this sales tap is, on average, 10,000 MMBtu per day or 250,000 MMBtu per year. The quantities delivered to the City of Dover would be within the entitlement currently certificated by the Commission in Docket Nos. CP85-89-000, *et al.*

It is claimed that the combined annual volumes sold through these three sales taps is projected to be less than five percent of Eastern Shore's annual deliveries and would, therefore, have minimal impact on Eastern Shore's remaining customers. Eastern Shore alleges that it would comply with part 157.206(d) of the Commission's Regulation prior to construction of the proposed sales taps. A detailed description of the facilities is included in the attached Appendix.

Comment date: May 31, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Michigan Consolidated Gas Company

[Docket No. CP90-1169-000]

April 18, 1990.

Take notice that on April 10, 1990, Michigan Consolidated Gas Company (MichCon), 500 Griswold Street, Detroit, Michigan 48226, pursuant to section 7(b) of the Natural Gas Act and parts 152 and 157 of the Commission's regulations under the Natural Gas Act, filed an application in Docket No. CP90-1169-000 for: (1) Authority to abandon and to transfer to its Utility Division the storage and transportation services currently being rendered by its Interstate Storage Division, and the facilities used to provide those services; and (2) a declaration that said facilities, once transferred, would be exempt from the provisions of the Natural Gas Act under section 1(c) thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MichCon states that through its Utility Division (UD), it is engaged in the storage, transmission and local distribution of natural gas to approximately one million customers within the State of Michigan, with these activities being subject to the jurisdiction of the Michigan Public Service Commission, exempt from the provisions of the Natural Gas Act under sections 1(b) and 1(c) thereof (14 FPC 535). MichCon indicates that since 1976, it has also been engaged in the storage and transportation of natural gas in interstate commerce through its Interstate Storage Division (ISD). MichCon also states that ISD is subject to the jurisdiction of the Commission. MichCon further states that UD and ISD are not legal entities, they are simply divisions of MichCon, with separate books of account, that were created in order to identify, for jurisdictional purposes, those facilities of MichCon that were to be used in intrastate commerce and those that were to be used in interstate commerce.

MichCon states that in 1980 it applied to the Commission for, and received, a "Hinshaw Pipeline" blanket certificate under what is now § 284.224 of the Commission's Regulations. In 1986, UJD became an "open access" transporter under Order No. 436. Pursuant to its blanket certificate UD, like ISD, can engage in the interstate storage and transportation of natural gas service subject to the jurisdiction of the Commission.

Accordingly, MichCon is, with this application, seeking the Commission's permission to abandon and transfer the services and facilities of ISD to UD and to render those services under UD's

blanket certificate for the remaining term of the applicable contracts. In addition, MichCon is asking that the Commission cancel ISD's tariff, and all outstanding certificates, including its routine transaction blanket certificate. Further, MichCon asks that the Commission declare the facilities, once transferred to UD, to be exempt from the provisions of the Natural Gas Act under section 1(c) thereof.

MichCon states that its proposal provides for reduced rates for the storage and transportation service, based on UD's current blanket certificate rate, for the remaining term of the services, and the reduced rates represent a significant reduction from ISD's current rates even after those rates are reduced to take into account the effect of refunds associated with new storage services, as required by the settlement agreement in ISD's last rate case.

MichCon states that the net effect of its proposal would be that it would continue to provide the same storage and transportation services as it did before, and would continue to do so subject to the jurisdiction of the Commission, but under different certificate authority. MichCon states that it would benefit in that day-to-day operations would be simplified, and its interstate customers would benefit through a reduction in storage and transportation charges. MichCon believes that its interstate storage customers would benefit from the fact that the proposal would enable MichCon to achieve greater operating efficiencies by providing storage services from its entire storage field system, rather than from the ISD storage filed alone.

Comment date: May 9, 1990, in accordance with Standard Paragraph F at the end of the notice.

4. Columbia Gulf Transmission Company

[Docket No. CP90-1194-000]

April 18, 1990.

Take notice that on April 12, 1990, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP90-1194-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Maverick Natural Gas Company (Maverick) under its blanket certificate issued in Docket No. CP86-239-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the

Commission and open to public inspection.

Columbia Gulf states that the maximum daily, average daily and annual quantities that it would transport on behalf of Maverick would be 2,000 MMBtu of natural gas, 1,200 MMBtu of natural gas and 438,000 MMBtu of natural gas, respectively.

Columbia Gulf indicates that in Docket No. ST90-2279-000 filed with the Commission, it reported that transportation service on behalf of Maverick commenced on March 30, 1990 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: June 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket Nos. CP90-1112-000, CP90-1113-000,

CP90-1114-000, CP90-1115-000, and CP90-1116-000]

April 18, 1990.

Take notice that United Gas Pipe Line Company (Applicant), 600 Travis, Post Office Box 1478, Houston, Texas 77251-1478, filed in the respective 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 in Docket No. CP88-6-000, 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.¹

¹ These prior notice requests are not consolidated.

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 initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: June 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket number (date filed)	Applicant	Shipper name	Peak day, ¹ average annual	Points of		Start up date rate schedule	Related ² dockets
				Receipt	Delivery		
CP90-1112-000 (4-3-90)	United Gas Pipe Line Company.	Texas Gas Marketing, Inc.	103,000 103,000 37,595,000	LA, TX, MS	LA, TX, MS, AL, FL	1-30-90, ITS.....	ST90-2159, CP88- 6-000.
CP90-1113-000 (4-3-90)	United Gas Pipe Line Company.	Texaco, Inc	51,500 51,500 18,797,000	TX	TX	2-2-90, ITS.....	ST90-1950, CP88- 6-000.
CP90-1114-000 (4-3-90)	United Gas Pipe Line Company.	Texas Gas Marketing, Inc.	103,000 103,000 37,595,000	LA, TX, MS, AL	TX, FL, MS, AL	2-6-90, ITS.....	ST90-2205, CP88- 6-000.
CP90-1115-000 (4-3-90)	United Gas Pipe Line Company.	Texaco, Inc	51,500 51,500 18,797,000	TX	TX	2-12-90, ITS.....	ST90-2552, CP88- 6-000.
CP90-1116-000 (4-3-90)	United Gas Pipe Line Company.	Marathon Oil Company.	15,450 15,450 5,639,250	LA	LA	2-1-90, ITS.....	ST90-2166, CP88- 6-000.

¹ Quantities are shown in MMBtu unless otherwise indicated.

² The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

6. Colorado Interstate Gas Company

[Docket No. CP90-1167-000]

April 18, 1990.

Take notice that on April 10, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in Docket No. CP90-1167-000 pursuant to sections 7(b) and 7(c) of the Natural Gas Act, for authority to decrease the general daily entitlements (GDE) and total annual entitlements (TAE) of two jurisdictional sales customers, Citizens Utilities Company (Citizens) and the Town of Trinidad, Colorado (Trinidad), and also to revise the maximum daily volume obligation for Citizens at existing delivery points, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, CIG requests authority to implement Citizens' request to reduce its GDE and TAE under Rate Schedule P-1 from 15,000 Mcf to 1,000 Mcf and 2,538,000 Mcf to 132,500 Mcf, respectively, and to abandon Citizen's GDE and TAE under Rate Schedule PS-1 from 3,000 Mcf and 21,000 Mcf, respectively, to be effective October 1, 1989, or such later date as approved by the Commission. In addition, CIG also proposes to revise the maximum daily volume obligation for Citizens at existing delivery points to include both sales and transportation volumes and to change the volumes attributable to certain of the delivery points. Likewise, CIG proposes to implement a request to reduce Trinidad's GDE and TAE under Rate Schedule SG-1 from 7,659 Mcf to 6,000 Mcf and 1,424,000 Mcf to 680,000 Mcf, respectively, to be effective

October 1, 1989, or such later date as approved by the Commission.

It is indicated that the Commission issued CIG a certificate in Docket No. CP89-1717-000 by order issued on November 30, 1989, which authorized a peaking service using CIG's Fort Morgan Storage Field, including and increase of 841 Mcf per day and 39,000 Mcf annually for Citizens. However, CIG advises that CIG and Citizens never signed a service agreement for the peaking service and service never commenced. Therefore, CIG requests that the Commission vacate that portion of the November 30, 1989, order as it pertains to service for Citizens.

Comment date: May 9, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. Florida Gas Transmission Company

[Docket No. CP90-1179-000]

April 18, 1990.

Take notice that on April 11, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-1179-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Southern Natural Gas Company (SNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to a transportation service agreement, dated November 14, 1979, between FGT and SNG, FGT agreed to transport, on a firm basis, up to 20,000 Mcf per day of natural gas imported from Mexico. It is further stated that this service is provided by FGT under its Rate Schedule X-12.

FGT states that by letter dated March 27, 1990, SNG advised FGT that it wished to terminate the service in light of the fact that SNG has not purchased gas imported from Mexico for several years and does not need to continue to reserve capacity in FGT's system for the transportation of such gas.

Comment date: May 9, 1990, in accordance with Standard Paragraph F at the end of this notice.

8. Williams Natural Gas Company

[Docket No. CP90-1193-000]

April 18, 1990.

Take notice that on April 12, 1990, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-1193-000 a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act for permission and approval to abandon by sale approximately 12.1 miles of 20-inch diameter lateral pipeline and appurtenant facilities in Carson and Gray Counties, Texas, and the transportation of gas through said facilities under the authorization issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

WNG states that the pipeline sought to be abandoned is obsolete and it is uneconomical to upgrade it to the same pressure as that of an existing 26-inch diameter parallel line. WNG indicates that it has received an offer to purchase the pipeline in place with the contractor agreeing to reclaim the pipe and restore the right-of-way to its original condition. WNG states that the sales price is

\$315,750 and the salvage value of the facilities is \$0.

Comment date: June 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-2205-001]

April 19, 1990.

Take notice that on April 12, 1990, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed pursuant to sections 7(c) of the Natural Gas Act (NGA) and amendment to its application in Docket No. CP89-2205-001, seeking a certificate of public convenience and necessity authorizing the construction, and operation of certain pipeline facilities, and the implementation of firm transportation services, all as described therein.

Specifically, Transco has filed an amendment to its previous application in which it proposed to construct on its South Virginia Lateral a new 5,300 horsepower compressor station and a new metering and regulating station in order to transport and deliver up to 80,000 Dt per day of natural gas for use at the Hopewell Congeneration Facility located in Prince George County, Virginia.

In its amendment, Transco has filed to reflect the substitution of two 3,600 horsepower gas turbine units in lieu of the two 2,650 horsepower reciprocating units specified in the original application. According to Transco, the decision for such substitution was made based on the earlier availability of the gas turbine units. The estimated net increase in the cost of using the gas turbine units is said to be approximately \$600,000. This results in a revised total facility cost for the project of approximately \$8.1 million.

Transco states that such increase in compression will not result in any increase in additional firm capacity on its South Virginia Lateral due to operating constraints on such lateral caused by certain patterns of customer requirements during peak periods and by the maximum allowable operating pressure limit.

Comment date: May 10, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Mid Louisiana Gas Company

[Docket No. CP90-1190-000]

April 19, 1990.

Take notice that on April 13, 1990, Mid Louisiana Gas Company (Mid Louisiana), Five Post Oak Park, Suite

800, Houston, Texas 77027, filed in Docket No. CP90-1195-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport on an interruptible basis under its blanket certificate Docket No. CP86-214-000, a maximum of 10,000 MMBtu on behalf of Sonat Marketing Company (Sonat), all as more fully set forth in the request on file with the Commission and open to public inspection.

Mid Louisiana states that service commenced February 10, 1990, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST90-21336, and estimates the volumes transported to be 10,000 MMBtu per day on peak day, 2,000 MMBtu on an average day and 730,000 MMBtu on an annual basis.

Mid Louisiana also indicates that no new facilities are to be constructed.

Comment date: June 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

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.

Lois D. Cashell,

Secretary.

[FR Doc. 90-9636 Filed 4-25-90; 8:45 am]

BILLING CODE 6717-01-M

Chicago Energy Exchange of Chicago, Inc.; Order Disclaiming Jurisdiction, Granting Request for Waivers and Blanket Approvals, and Accepting Rate Schedule for Filing

[Docket No. ER90-225-000 and EL90-17-000]

Issued April 19, 1990.

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

On February 21, 1990, Chicago Energy Exchange of Chicago, Inc. (Chicago Energy) filed a petition requesting that the Commission clarify the scope of its jurisdiction, disclaim jurisdiction, waive certain Commission regulations, grant certain blanket approvals, and accept Chicago Energy's proposed rate schedule for filing. Chicago Energy requests an effective date for the proposed rate schedule of 60 days after filing.

Background

Chicago Energy states that it intends to operate both as a broker and a marketer of oil, natural gas, and electricity to wholesale purchasers, in order to service federal, state and local governments, major railroads, airlines, gas station chains and large and medium-size industrial and commercial

companies.¹ As a broker, Chicago Energy states that it will neither purchase nor sell electric power but will provide brokerage-type coordination services. As a marketer, Chicago Energy proposes to purchase and resell electric power to non-affiliates at mutually agreed upon rates, at or below the buyer's cost of alternative supply. Chicago Energy states that it will not own any generation or transmission facilities, nor will it sell to customers solely dependent on it for electric service.

Chicago Energy requests, consistent with Commission precedent,² that we disclaim jurisdiction over its brokering transactions. Chicago Energy states that, as a broker, it will not purchase and resell electric power but will act as a facilitator, bringing together buyers and sellers.

Chicago Energy recognizes that the Commission has jurisdiction over its power marketing activities.³ Chicago Energy requests that, because its business operations and objectives will be essentially the same as those presented in *Citizens Energy, Howell*, and *Torco*, the Commission should grant the waivers and approvals granted in those proceedings.⁴

In justifying its request for waivers, Chicago Energy states that it does not own any power production or transmission assets and that it intends to price the power it sells with reference to its purchase price. Further, Chicago Energy states it will own no facilities to which procurement policies would apply. Chicago Energy states that it is unaware of any interlocks that would become proscribed; to the extent that any occur, it requests the same treatment granted in *Citizens Energy* and *Howell*. Chicago Energy also states that, as in *Citizens Energy* and *Howell*,

because it neither owns nor operates generation or transmission equipment, its only electric costs are the costs of purchased power and that, because all of its sales are to be market-based, cost-justification of its rates is meaningless. Finally, Chicago Energy asserts that because it is not a public utility with a legal obligation to serve customers, the Commission should grant blanket approvals of part 34 of the Commission's regulations.

Chicago Energy requests that the Commission accept for filing its proposed rate schedule for power marketing transactions. Chicago Energy states that its proposed tariff provides for the sale of power by Chicago Energy to any non-affiliated customer at mutually agreed prices, at or below the purchaser's expected alternative cost for similar electric service.

Chicago Energy argues that the Commission can rely and has relied on market forces to control rates and to prevent them from becoming excessive, if the seller has no market power.⁵ Chicago Energy states that, similar to *Citizens Power & Light Corporation*,⁶ it neither owns nor is affiliated with any owner of transmission facilities, is not affiliated with any entity having a franchised electric service territory, and therefore, lacks market power. Chicago Energy further states that under the proposed rate schedule, the purchaser will provide written representation to Chicago Energy that the purchase is at or below the buyer's expected cost of its alternative source of similar power. Chicago Energy states that this representation will provide a formal price cap in any transaction. To protect further against self-dealing, Chicago Energy's proposed rate schedule bars sales "to any entity controlled by, under common control with, or controlling Chicago Energy."⁷

Notice of Chicago Energy's filing was published in the *Federal Register*, with comments, protests, or interventions due on or before March 16, 1990.⁸ No

¹ Chicago Energy Petition at 2.

² *Citizens Energy Corporation*, 35 FERC ¶ 61,198 (1986) (*Citizens Energy*); *Howell Gas Management Co.*, 40 FERC ¶ 61,336 (1987) (*Howell*); *Torco Energy Marketing, Inc.*, 48 FERC ¶ 61,294 (1989) (*Torco*).

³ Chicago Energy states that the Commission is currently reviewing in *Citizens Power and Light Corporation*, Docket No. EL89-31-000, a petition for declaratory order seeking a disclaimer of jurisdiction over a power marketing entity. Chicago Energy requests that because its marketing activities are not materially different from those proposed by *Citizens Power*, any disclaimer awarded to the marketing activities in that docket should apply to Chicago Energy.

⁴ Chicago Energy requests that we waive the following Commission regulations: Parts 41, 101, and 141 (Uniform System of Accounts and related reporting requirements and annual charges); part 50 (requirement to file procurement policies and practices); parts 45 and 46 (interlocking directorates); part 34 (future issuance of securities and assumptions of liability); subparts B and C of part 35, except §§ 35.12(a), 35.13(b), 35.15 and 35.16 (partial waiver of full reporting requirements).

⁵ Chicago Energy cites: *Ocean States Power*, 44 FERC ¶ 61,261 (1988); *Transwestern Pipeline Co.*, 43 FERC ¶ 61,240 (1988); *Pacific Gas and Electric Co.*, 42 FERC ¶ 61,406 (1988); modified on reh'g, 43 FERC ¶ 61,403 (1988); *Orange and Rockland Utilities*, 42 FERC ¶ 61,012 (1988); *Baltimore Gas and Electric Co.*, 40 FERC ¶ 61,170 (1987); *Pacific Gas and Electric Co.*, 38 FERC ¶ 61,242 (1987).

⁶ *Citizens Power & Light Corporation (Citizens Power)*, 48 FERC ¶ 61,210 (1989).

⁷ Chicago Energy Petition, Exhibit A, Rate Schedule.

⁸ 55 Fed. Reg. 8,977 (1990).

comments, protests, or interventions were filed.

Discussion

Consistent with the Commission's findings in *Citizens Energy*,⁹ and *National Electric Associates Limited Partnership (NEA)*,¹⁰ Chicago Energy's power brokering activities do not involve any purchase or sale of power by Chicago Energy. Thus, no question of jurisdiction arises. Accordingly, we disclaim jurisdiction over Chicago Energy's brokering activities.

To approve Chicago Energy's proposed rate schedule under the Federal Power Act (FPA), the Commission must find that the rates will fall within a "zone of reasonableness."¹¹ The zone is "bounded at one end by the investor interest against confiscation and at the other end by the consumer interest against exorbitant rates."¹² The Commission has allowed pricing flexibility where we have concluded that market-based rates fall within the zone of reasonableness in circumstances where the seller can show that it lacks market power and that there is a pricing cap based either on the seller's cost¹³ or on the purchaser's avoided cost.¹⁴

Chicago Energy's power marketing proposal addresses these concerns in the same way as the proposals of *Citizens Power* and *NEA*, and its proposed tariff is identical to that on file for both *Citizens Power* and *NEA*. Chicago Energy owns no generating or transmission facilities. Chicago Energy is not affiliated with any entity that owns transmission facilities. Chicago Energy is not affiliated with any entity that has a franchised service territory. Consequently, based on the facts before us, we find that Chicago Energy has characteristics that provide us with sufficient assurance that it lacks market power. In addition, since Chicago Energy will sell only to non-affiliates, it will not be able to engage in self-dealing. Moreover, Chicago Energy will explicitly require buyers to state that the purchase is at or below the buyers' alternative costs, thus providing a price cap. Accordingly, as in *Citizens Power* and *NEA*, we will accept Chicago

Energy's proposed rate schedule for filing.

As in *Citizens Power* and *NEA*, Chicago Energy could obtain control of generation or transmission facilities, which would require a review of its market power and opportunities for self-dealing.¹⁵ Accordingly, as in *Citizens Power* and *NEA*, we will attach two reporting conditions to our approval in order to monitor for potential market power problems:¹⁶ (1) that Chicago Energy promptly file with the Commission a notice of any change in status or any change in organization or operation that would constitute a departure from the characteristics the Commission relied upon for approving Chicago Energy's rate schedule; and (2) that Chicago Energy make quarterly informational filings concerning each purchase contract and each sale contract, with the first filing due June 30, 1990.¹⁷

As we stated in *Citizens Power* and *NEA*, we believe that the conditions, safeguards, and monitoring provided here to ensure continuing lack of market power by Chicago Energy, combined with the condition that rates be at or below the purchaser's expected alternative cost, will ensure a rate that is legally sufficient under the FPA.¹⁸

Because Chicago Energy's rates are market-based, as in *Citizens Power* and *NEA*, the requirements under subpart B and C of part 35 of the Commission's regulations are inapplicable.¹⁹ We will, therefore, grant Chicago Energy's request to waive these requirements, in part. In addition to the contract information discussed above, we will also require Chicago Energy to file notices of cancellation and succession. In addition, Chicago Energy must file any revision to its formula for computing rates.

The Commission will also grant the additional waivers and blanket approvals requested by Chicago Energy, consistent with *Citizens Power* and *NEA* and cases cited therein, as discussed

below. Parts 41, 101, and 141 prescribe certain informational requirements that focus on the assets that a utility owns. Because, as in *Citizens Power* and *NEA*, Chicago Energy will not own any electric power generation or transmission facilities, we will grant waivers of the requirements of these parts. Similarly, we will waive the requirements of the part 50 related to procurement because Chicago Energy will not engage in such an activity. Parts 45 and 46 prescribe filing requirements for interlocking directors. As noted in our previous cases, the Commission cannot waive the statutory requirements of section 305 of the FPA²⁰ which prohibit any interlocking directorates without Commission authorization. We will, consistent with our precedent, require only an abbreviated statement identifying any jurisdictional interlock and will reserve the right to require a further showing that public or private interests are not adversely affected.²¹

We will also grant Chicago Energy's request for blanket approval under part 34 for all future issuances of securities and assumptions of liability, subject to objection by any interested party, as ordered herein.²² Since the purpose of part 34 is to ensure the financial viability of public utilities obligated to serve electric consumers, and Chicago Energy does not intend to obligate itself to serve electric consumers, the requirements are inapplicable.

Because Chicago Energy has given only a general description of how it intends to operate and there is no way to anticipate the future scope or structure of its activities, we will put Chicago Energy on notice that its rate will remain subject to the statutory standards of the EPA, and that waivers granted herein may be rescinded in the future if the Commission finds that they adversely impact upon the Commission's ability to meet its statutory obligations under the FPA.

The Commission orders:

(A) Chicago Energy's request to waiver of parts 41, 50, 101, and 141 of the Commission's regulations is hereby granted.

(B) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Chicago Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

⁹ 35 FERC at 61,453.

¹⁰ 50 FERC ¶ 61,378 (1990).

¹¹ E.g., *Alabama Electric Cooperative v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982).

¹² E.g., *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1177 (D.C. Cir. 1987), quoting, *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

¹³ See, e.g., *Pacific Gas and Electric Co. (Turlock)*, 42 FERC ¶ 61,406 (1988), order on rehearing, 43 FERC ¶ 61,403 (1988).

¹⁴ E.g., *Orange and Rockland Utilities*, 42 FERC ¶ 61,012 (1988).

¹⁵ See 48 FERC at 61,777; 50 FERC at ____.

¹⁶ *Id.* at 61,777-78.

¹⁷ The filing requirements herein incorporate the requirements outlined in *Citizens Power* and *NEA*: the buyer's or seller's name; a brief description of the service; the delivery points; the quantities; the contract's duration; the buyer's certification that the rate is equal to or below its alternative costs; any other attributes that contribute to its market value.

¹⁸ See 48 FERC at 61,779; 50 FERC at ____.

¹⁹ Subparts B and C require cost data under section 205 and 206 of the FPA, 16 U.S.C. 824d and 824e (1988), and information concerning calculations, changes in suspended rates, information by reference, refund requirements, research and development clauses, percentage adders, tax normalization, and construction work in progress.

²⁰ 16 U.S.C. 825d (1988).

²¹ See 48 FERC at 61,780; 50 FERC at ____.

²² *Id.*

DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 358.211 and 385.214).

(C) Absent a request for hearing within the period set forth in Ordering Paragraph (B) above, Chicago Energy is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; *provided* that such issue or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(D) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Chicago Energy's issuance of securities or assumptions of liability.

(E) Until further order of this Commission, any person now holding or who may hold an otherwise proscribed interlock involving Chicago Energy is authorized to hold such position provided that such person files the application required by ordering paragraph (F) below.

(F) Until further order of this Commission, the full requirements of parts 45 and 46 of the Commission's regulations, except as noted below, are hereby waived with respect to those persons subject to ordering paragraph (E) above, and those persons instead shall file a sworn application providing the following information:

(1) Full name and business address; and

(2) All jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(G) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocks addressed above.

(H) Chicago Energy's request for waiver of the provisions of subparts B and C of part 35 of the Commission's regulations is hereby granted in part, as discussed in the body of this order.

(I) Chicago Energy's rate schedule is hereby accepted for filing to be effective April 20, 1990,²³ conditioned upon the

compliance filing and the filing requirements in ordering paragraphs (J), (K), and (L) below.

(J) Within 30 days of the date of this order, Chicago Energy will notify the Commission whether it accepts the conditions discussed in the body of this order. Absent such approval ordering paragraph (I) above will be void, as of the date of this order.

(K) Chicago Energy will submit a statement within 30 days of this order that satisfies the requirements that a marketer must meet at the time of filing a request to obtain pricing flexibility.

(L) Chicago Energy will submit quarterly an informational filing, as discussed in the body of this order. The first quarterly informational filing will be due on June 30, 1990.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 90-9635 Filed 4-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-6619-003 et al.]

Oryx Energy Co. (Formerly Sun Exploration and Production Company); Notice of Redesignation

April 19, 1990.

Take notice that on June 2, 1989, Oryx Energy Company of P.O. Box 2880, Dallas, Texas 75221, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the certificates of public convenience and necessity previously issued to Sun Exploration and Production Company listed in the Appendix hereto be amended to reflect the change of corporate name to Oryx Energy Company. Oryx Energy Company also requests that Sun Exploration and Production Company's rate schedules listed in the Appendix hereto be redesignated as those of Oryx Energy Company, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective May 3, 1989, the name of Sun Exploration and Production Company was changed to Oryx Energy Company as evidenced by a Restated Certificate of Incorporation dated May 3, 1989.

Notice is hereby given that the certificates and related rate schedules listed in the Appendix hereto are redesignated to reflect the corporate name change from Sun Exploration and

Production Company to Oryx Energy Company.

Lois D. Cashell,

Secretary.

APPENDIX

Sun Exploration and Production Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
1	G-6619	El Paso Natural Gas Co.
6	G-6629	Transcontinental Gas Pipe Line Corp.
9	G-6631	Tennessee Gas Pipeline Co.
11	G-6633	Tennessee Gas Pipeline Co.
18	G-6640	United Gas Pipe Line Co.
21	G-6643	United Gas Pipe Line Co.
23	G-6645	Texas Eastern Transmission Corp.
26	G-6648	Texas Gas Transmission Corp.
27	G-6670	Transcontinental Gas Pipe Line Corp.
28	G-6839	Texas Eastern Transmission Corp.
30	G-6849	El Paso Natural Gas Co.
33	G-6652	Tennessee Gas Pipeline Co.
35	G-6654	Texas Eastern Transmission Corp.
37	G-6837	Tennessee Gas Pipeline Co.
38	G-3653	Columbia Gas Transmission Corp.
42	G-3966	Texas Gas Pipeline Co.
47	G-7345	Lone Star Gas Co.
49	G-7346	Lone Star Gas Co.
58	G-6656	El Paso Natural Gas Co.
60	G-6663	Northern Natural Gas Co.
61	G-6659	El Paso Natural Gas Co.
65	G-8591	El Paso Natural Gas Co.
66	G-8592	United Gas Pipe Line Co.
69	G-9462	Williams Natural Gas Co.
70	G-9483	Tennessee Gas Pipeline Co.
71	G-9989	Transcontinental Gas Pipe Line Corp.
72	G-10480	Tennessee Gas Pipeline Co.
74	G-10819	Texas Eastern Transmission Corp.
76	G-11116	Columbia Gas Transmission Corp.
80	G-11854	El Paso Natural Gas Co.
84	G-12548	Northern Natural Gas Co.
87	G-13059	Southern Natural Gas Co.
91	G-13748	Texas Eastern Transmission Corp.
94	G-13931	Northern Natural Gas Co.

²³ The rate schedule designation is: *Chicago Energy Exchange of Chicago, Inc. Rate Schedule FERC No. 1*

APPENDIX—Continued

Sun Explora- tion and Production Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
99	G-15434	K N Energy, Inc.
105	G-18243	Texas Gas Transmission Corp.
106	G-18541	Natural Gas Pipeline Co. of America
108	G-16774	El Paso Natural Gas Co.
109	G-18909	Natural Gas Pipeline Co. of America
113	G-19574	Southern Natural Gas Co.
115	G-16526	Transcontinental Gas Pipe Line Corp.
117	C160-218	Arkla Energy Resources
122	G-15791	Transwestern Pipeline Co.
124	C161-372	Transwestern Pipeline Co.
125	C161-657	Tennessee Gas Pipeline Co.
129	C161-956	Valero Interstate Transmission Co.
132	C161-1432	Transwestern Pipeline Co.
133	C161-1584	Tennessee Gas Pipeline Co.
135	C162-165	Natural Gas Pipeline Co. of America
141	C162-470	Arkla Energy Resources
143	C162-1003	El Paso Natural Gas Co.
144	C162-1038	Northern Natural Gas Co.
147	C162-1186	Tennessee Gas Pipeline Co.
151	C163-35	El Paso Natural Gas Co.
155	C163-1142	Northern Natural Gas Co.
158	C163-1427	Arkla Energy Resources
160	C164-315	Tennessee Gas Pipeline Co.
162	C164-353	Texas Eastern Transmission Corp.
168	C164-981	Northern Natural Gas Co.
169	C164-1166	Questar Pipeline Co.
173	C164-1425	Arkla Energy Resources
176	C165-353	El Paso Natural Gas Co.
177	C165-541	Valero Interstate Transmission Co.
178	C165-512	West Texas Gathering Co.
180	C165-592	Lone Star Gas Co.
183	C165-936	Natural Gas Pipeline Co. of America
196	C166-569	Texas Gas Transmission Corp.
199	C166-781	Williams Natural Gas Co.
201	C166-376	Trunkline Gas Co.
203	C167-84	United Gas Pipe Line Co.
205	C167-172	Southern Natural Gas Co.
206	C166-831	Texas Eastern Transmission Corp.

APPENDIX—Continued

Sun Explora- tion and Production Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
209	C166-891	Texas Eastern Transmission Corp.
210	C167-516	Arkla Energy Resources
211	C167-734	Northern Natural Gas Co.
213	C161-1710	Valley Gas Transmission Co.
214	C167-1022	Questar Pipeline Co.
218	C167-1609	United Gas Pipe Line Co.
219	C168-32	Lone Star Gas Co.
220	C168-33	Lone Star Gas Co.
222	C168-200	Arkla Energy Resources
223	C168-201	Columbia Gas Transmission Corp.
224	C168-527	Transcontinental Gas Pipe Line Corp.
226	C168-846	Breckenridge Gasoline Co.
231	C168-1248	Diamond Shamrock Corp.
233	C165-989	Northern Natural Gas Co.
237	C169-176	Lone Star Gas Co.
239	C169-177	Cimarron Transmission Co.
241	C169-334	Natural Gas Pipeline Co. of America
242	C169-425	El Paso Natural Gas Co.
251	C170-134	Southern Natural Gas Co.
252	C170-266	El Paso Natural Gas Co.
253	C162-890	Northern Natural Gas Co.
254	C170-458	Florida Gas Transmission Co.
256	C170-674	NI Gas Supply, Inc.
258	G-3884	Tennessee Gas Pipeline Co.
263	G-5932	Arkla Energy Resources
267	C175-214	National Fuel Gas Supply Corp.
269	G-4948	United Gas Pipe Line Co.
270	G-5175	United Gas Pipe Line Co.
272	G-4946	United Gas Pipe Line Co.
275	G-4949	United Gas Pipe Line Co.
278	G-4915	Phillips Petroleum Co.
282	G-5131	Texas Eastern Transmission Corp.
284	G-5125	Tennessee Gas Pipeline Co.
285	G-4918	Phillips Petroleum Co.
287	G-4917	Transcontinental Gas Pipe Line Corp.
288	G-5134	United Gas Pipe Line Co.
291	G-6050	Arkla Energy Resources
294	G-5182	Colorado Interstate Gas Co.
297	G-5178	Williams Natural Gas Co.
298	G-5177	El Paso Natural Gas Co.

APPENDIX—Continued

Sun Explora- tion and Production Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
299	G-5174	El Paso Natural Gas Co.
300	G-5172	Northern Natural Gas Co.
301	G-6045	United Gas Pipe Line Co.
303	G-8663	Tennessee Gas Pipeline Co.
306	G-8826	United Gas Pipe Line Co.
309	G-2979	Phillips Petroleum Co.
310	G-2991	Texas Gas Transmission Corp.
311	G-3810	El Paso Natural Gas Co.
313	G-3812	El Paso Natural Gas Co.
314	G-3813	Northern Natural Gas Co.
315	G-3817	Dorchester Gas Production Co.
316	G-4416	El Paso Natural Gas Co.
317	G-4268	Colorado Interstate Gas Co.
318	G-4511	El Paso Natural Gas Co.
321	G-9782	Peoples Natural Gas Co.
323	G-10370	Colorado Interstate Gas Co.
324	G-10621	Northern Natural Gas Co.
328	G-11177	Texas Eastern Transmission Corp.
330	G-11611	Texas Eastern Transmission Corp.
332	G-11762 & G- 16010.	Northern Natural Gas Co.
334	G-12113	El Paso Natural Gas Co.
338	G-11122	Colorado Interstate Gas Co.
339	G-12901	Northern Natural Gas Co.
340	G-12902	El Paso Natural Gas Co.
342	G-13094	United Gas Pipe Line Co.
346	G-13634	Northern Natural Gas Co.
349	G-14143	Northern Natural Gas Co.
355	G-16109	Colorado Interstate Gas Co.
358	G-14288	Northern Natural Gas Co.
359	G-16134	Natural Gas Pipeline Co. of America
361	G-17461	United Gas Pipe Line Co.
363	G-18173	Colorado Interstate Gas Co.
364	G-3887	Tennessee Gas Pipeline Co.
368	G-18294	Texas Gas Transmission Corp.
371	G-14753	Transcontinental Gas Pipe Line Corp.
373	G-19511	Valero Interstate Transmission Co.
375	G-20092	Arkla Energy Resources

APPENDIX—Continued

Sun Explora- tion and Produc- tion Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
378	CI60-85.....	United Gas Pipe Line Co.
381	CI60-205.....	Arkla Energy Resources
382	CI60-250.....	United Gas Pipe Line Co.
383	CI60-353.....	Trunkline Gas Co.
384	G-17899.....	Valero Interstate Transmission Co.
386	CI60-800.....	Texas Gas Transmission Corp.
388	G-18142.....	Transwestern Pipeline Co.
389	G-3815.....	Williams Natural Gas Co.
390	G-9530.....	Tennessee Gas Pipeline Co.
394	CI61-1229.....	United Gas Pipe Line Co.
395	CI62-462.....	Northern Natural Gas Co.
396	G-8286.....	Transcontinental Gas Pipe Line Corp.
399	CI61-1395.....	Williams Natural Gas Co.
402	CI62-1412.....	Ringwood Gathering Co.
404	CI63-150.....	Northern Natural Gas Co.
405	CI63c721.....	Texas Eastern Transmission Corp.
408	CI63-1502.....	El Paso Natural Gas Co.
409	CI64-40.....	Arkla Energy Resources
413	CI64-106.....	Northern Natural Gas Co.
415	CI64c158.....	Southern Union Gathering Co.
416	CI64c261.....	Arkla Energy Resources
417	CI64-555.....	Northern Natural Gas Co.
418	CI64-543.....	Northern Natural Gas Co.
419	CI63-1407.....	K N Energy, Inc.
420	CI64-835.....	Natural Gas Pipeline Co. of America
422	CI64-1462.....	CRA, Inc.
424	CI65-164.....	Texas Eastern Transmission Corp.
428	CI65-1053.....	Northern Natural Gas Co.
431	CI65-1243.....	El Paso Natural Gas Co.
432	CI66-19.....	El Paso Natural Gas Co.
434	CI66-172.....	Texas Gas Transmission Corp.
435	CI66-470.....	Arkla Energy Resources
445	CI67-41.....	Northern Natural Gas Co.
447	CI67-230.....	Trunkline Gas Co.
448	CI67-1005.....	Williams Natural Gas Co.
449	CI63-1286.....	Valley Gas Transmission Co.
450	CI67-1085.....	Ringwood Gathering Co.
461	G-5173 & G-5181.....	Northern Natural Gas Co.

APPENDIX—Continued

Sun Explora- tion and Produc- tion Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
462	G-14931.....	Northern Natural Gas Co.
463	CI69-5.....	Northern Natural Gas Co.
464	CI69-6.....	Colorado Interstate Gas Co.
466	CI66-7.....	Lone Star Gas Co.
468	CI69-0328.....	Natural Gas Pipeline Co. of America
469	CI69-0438.....	Natural Gas Pipeline Co. of America
471	CI69-882.....	Transcontinental Gas Pipe Line Corp.
473	CI69-1013.....	Natural Gas Pipeline Co. of America
478	CI70-234.....	Breckenridge Gasoline Co.
479	CI70-775.....	Southern California Gas Co.
480	CI70-657.....	Transcontinental Gas Pipe Line Corp.
482	CI69-672.....	Transcontinental Gas Pipe Line Corp.
485	CI70-654.....	Transcontinental Gas Pipe Line Corp.
486	CI71-358.....	ANR Pipeline Co.
487	CI63-1239.....	Northern Natural Gas Co.
489	CI70-468.....	Tennessee Gas Pipeline Co.
494	CI71-209.....	Transcontinental Gas Pipe Line Corp.
498	CI71-825.....	Arkla Energy Resources
499	CI72-41.....	United Gas Pipe Line Co.
503	CI72-304.....	Columbia Gas Transmission Corp.
505	CI72-414.....	Florida Gas Transmission Co.
506	CI72-466.....	Arkla Energy Resources
509	CI72-706.....	Transwestern Pipeline Co.
514	CI71-788.....	United Gas Pipe Line Co.
516	CI73-687.....	El Paso Natural Gas Co.
517	CI73-878.....	Trunkline Gas Co.
518	CI73-879.....	Trunkline Gas Co.
519	CI73-880.....	Trunkline Gas Co.
529	CI65-1243.....	(NPC) Northwest Pipeline Corp.
531	CI75-202.....	El Paso Natural Gas Co.
532	CI75-353.....	Transcontinental Gas Pipe Line Corp.
533	CI75-199.....	United Gas Pipe Line Co.
536	CI75-427.....	Texas Gas Transmission Corp.
537	CI75-443.....	Texas Gas Transmission Corp.
539	CI75-476.....	Transcontinental Gas Pipe Line Corp.
540	CI75-545.....	Breckenridge Gasoline Co.
541	CI75-649.....	Mississippi River Transmission Corp.
544	CI76-189.....	El Paso Natural Gas Co.
545	CI76-230.....	El Paso Natural Gas Co.

APPENDIX—Continued

Sun Explora- tion and Produc- tion Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
546	CI76-294.....	Transwestern Pipeline Co.
547	CI75-754.....	Colorado Interstate Gas Co.
548	CI76-309.....	Colorado Interstate Gas Co.
549	CI76-310.....	Colorado Interstate Gas Co.
551	CI76-362.....	Southern Natural Gas Co.
556	CI77-89.....	Arkla Energy Resources
559	CI75-245.....	Arkla Energy Resources
560	CI75-247.....	K N Energy, Inc.
562	CI75-249.....	Arkla Energy Resources
564	CI75-254.....	Arkla Energy Resources
566	CI75-265.....	Northern Natural Gas Co.
569	CI75-268.....	Williams Natural Gas Co.
572	CI75-329.....	Transwestern Pipeline Co.
576	CI75-424.....	Western Transmission Co.
579	CI75-627.....	Arkla Energy Resources
582	CI77-243.....	Panhandle Eastern Pipe Line Co.
583	CI77-75.....	Texas Eastern Transmission Corp.
587	CI77-436.....	Trunkline Gas Co.
588	CI77-587.....	Transcontinental Gas Pipe Line Corp.
590	CI77-644.....	El Paso Natural Gas Co.
592	CI77-751.....	Florida Gas Transmission Co.
596	CI78-28.....	Southern Natural Gas Co.
599	CI78-230.....	Colorado Interstate Gas Co.
601	CI78-508.....	ANR Pipeline Co.
602	CI78-539.....	Trunkline Gas Co.
604	CI78-573.....	El Paso Natural Gas Co.
605	CI78-655.....	Northwest Pipeline Corp.
606	CI78-896.....	Alabama-Tennessee Natural Gas Co.
607	CI78-1009.....	Trunkline Gas Co.
608	CI78-1182.....	Arkla Energy Resources
609	CI78-1214.....	Williams Natural Gas Co.
611	CI79-83.....	Transco Gas Supply Co.
612	CI79-79.....	Williams Natural Gas Co.
613	CI78-892.....	El Paso Natural Gas Co.
615	CI79-27.....	Williams Natural Gas Co.
616	CI78-1203.....	Colorado Interstate Gas Co.
617	CI80-6.....	Texas Eastern Transmission Corp.
619	CI80-108.....	Northwest Pipeline Corp.
620	CI80-72.....	El Paso Natural Gas Co.

APPENDIX—Continued

Sun Explora- tion and Produc- tion Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
622	G-12398	Columbia Gas Transmission Corp.
623	CI60-506	Tennessee Gas Pipeline Co.
624	CI61-1412	Transcontinental Gas Pipe Line Corp.
625	CI61-1412	Tennessee Gas Pipeline Co.
626	CI61-1412	Tennessee Gas Pipeline Co.
627	CI62-1251	Arkla Energy Resources
628	G-5991	El Paso Natural Gas Co.
631	G-5991	El Paso Natural Gas Co.
632	G-9261	El Paso Natural Gas Co.
633	G-10155	Northern Natural Gas Co.
634	G-10257	El Paso Natural Gas Co.
635	G-12188	El Paso Natural Gas Co.
637	G-14407	El Paso Natural Gas Co.
640	G-15296	Northwest Pipeline Corp.
641	G-16911	Cimarron Transmission Co.
642	G-17385	El Paso Natural Gas Co.
642	G-18659	El Paso Natural Gas Co.
642	G-19959	El Paso Natural Gas Co.
643	G-18507	Natural Gas Pipeline Co. of America
644	G-18549	Northern Natural Gas Co.
645	G-18303	El Paso Natural Gas Co.
647	G-19545	Phillips Petroleum Co.
648	CI60-278	Phillips Petroleum Co.
649	CI60-774	Phillips Petroleum Co.
650	CI60-780	Phillips Petroleum Co.
651	CI60-1044	Phillips Petroleum Co.
652	CI60-1079	Phillips Petroleum Co.
653	CI61-1425	El Paso Natural Gas Co.
654	CI61-1425	El Paso Natural Gas Co.
658	CI61-1425	El Paso Natural Gas Co.
659	CI61-1425	El Paso Natural Gas Co.
660	CI61-1425	El Paso Natural Gas Co.
661	CI61-1425	El Paso Natural Gas Co.
662	CI61-1425	El Paso Natural Gas Co.
664	CI61-1429	El Paso Natural Gas Co.
666	CI61-1429	El Paso Natural Gas Co.
668	CI61-1429	El Paso Natural Gas Co.
669	CI61-1429	El Paso Natural Gas Co.
670	CI61-1429	El Paso Natural Gas Co.

APPENDIX—Continued

Sun Explora- tion and Produc- tion Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
671	CI61-1429	El Paso Natural Gas Co.
672	CI61-1429	El Paso Natural Gas Co.
674	CI61-1429	El Paso Natural Gas Co.
677	CI61-1429	El Paso Natural Gas Co.
678	CI61-1582	El Paso Natural Gas Co.
679	CI61-1649	Phillips Petroleum Co.
686	CI62-1237	El Paso Natural Gas Co.
688	CI63-469	Southern Natural Gas Co.
689	CI63-1351	El Paso Natural Gas Co.
690	CI63-1573	Phillips Petroleum Co.
691	CI64-302	Phillips Petroleum Co.
692	CI64-1547	K N Energy, Inc.
693	CI64-1554	K N Energy, Inc.
694	CI65-223	Northwest Pipeline Corp.
695	CI65-490	El Paso Natural Gas Co.
696	CI65-1196	ANR Pipeline Co.
698	CI66-103	Transwestern Pipeline Co.
699	CI66-129	El Paso Natural Gas Co.
701	CI67-822	Southern Union Gathering Co.
702	CI68-509	Arkla Energy Resources
706	CI71-262	Tennessee Gas Pipeline Co.
707	CI71-886	Transcontinental Gas Pipe Line Corp.
708	CI72-163	El Paso Natural Gas Co.
709	CI72-176	Northern Natural Gas Co.
710	CI72-290	Southern Natural Gas Co.
712	CI72-556	K N Energy, Inc.
714	CI72-626	Northern Natural Gas Co.
715	CI72-628	Northern Natural Gas Co.
716	CI73-55	Arkla Energy Resources
718	CI73-359	Florida Gas Transmission Co.
721	CI66-129	Northwest Pipeline Corp.
723	CI76-221	El Paso Natural Gas Co.
724	CI76-287	Transwestern Pipeline Co.
726	CI77-114	El Paso Natural Gas Co.
727	CI77-134	K N Energy, Inc.
728	CI77-126	El Paso Natural Gas Co.
730	CI77-230	Texas Gas Transmission Corp.
731	CI77-446	Trunkline Gas Co.
735	CI78-626	El Paso Natural Gas Co.
736	CI78-850	ANR Pipeline Co.
737	CI78-1213	El Paso Natural Gas Co.
738	CI80-258	Trunkline Gas Co.

APPENDIX—Continued

Sun Explora- tion and Produc- tion Co.; FERC gas rate schedule No.	Certificate docket No.	Purchaser
739	CI80-466	ANR Pipeline Co.
740	CI81-224	Trunkline Gas Co.
741	CI81-266	Tennessee Gas Pipeline Co.
744	CI79-410	Trunkline Gas Co.
747	CI82-135	Texas Eastern Transmission Corp.
748	CI82-180	Transcontinental Gas Pipe Line Corp.
749	CI82-178	Trunkline Gas Co.
750	CI82-306	Trunkline Gas Co.
752	CI82-351	ANR Pipeline Co.
753	CI83-37	Texas Eastern Transmission Corp.
754	CI83-253	Tennessee Gas Pipeline Co.
755	CI83-253	Tennessee Gas Pipeline Co.
756	CI83-253	Tennessee Gas Pipeline Co.
757	CI83-374	Texas Eastern Transmission Corp.
758	CI80-252	Trunkline Gas Co.
759	CI79-487	ANR Pipeline Co.
760	CI84-452	Transcontinental Gas Pipe Line Corp.
761	CI84-453	Transcontinental Gas Pipe Line Corp.
762	CI84-475	Trunkline Gas Co.
763	CI84-476	Trunkline Gas Co.
764	CI84-478	Williams Natural Gas Co.
765	CI84-479	Williams Natural Gas Co.
766	CI84-480	Williams Natural Gas Co.
767	CI84-481	Williams Natural Gas Co.
768	CI84-499	Williams Natural Gas Co.
769	CI85-34	Williams Natural Gas Co.
771	CI85-495	Arkla Energy Resources
772	CI86-213	Transwestern Pipeline Co.
773	CI86-422	TXG Gas Marketing Co.
774	CI87-331	ANR Pipeline Company
775	CI88-636	El Paso Natural Gas Co.

[FR Doc. 90-9637 Filed 4-25-90; 8:45 am]

BILLING CODE 6717-01-M

**ENVIRONMENTAL PROTECTION
AGENCY****Agency Information Collection
Activities Under OMB Review**

[FRL No. 3758-9]

AGENCY: Environmental Protection
Agency (EPA).**ACTION:** Notice.

SUMMARY: In compliance with the paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Partial Updating of TSCA Inventory Data Base; Production and Site Reports. (EPA ICR #1011.02; OMB #2070-0070). This request would reinstate a previously approved collection which has expired.

Abstract: Section 8 of the Toxic Substances Control Act (TSCA) requires manufacturers of chemical substances to report current production volume, plant site data, and their chemicals' manufacture/import status to the EPA. Respondents submit reports every four years on either an EPA designated reporting form, a computer tape(s) or floppy diskette(s). EPA uses this information to compile and keep current the listing of chemical substances manufactured, imported, and processed for commercial purposes in the United States.

Burden statement: The public reporting burden for this collection of information is estimated to average 11½ hours for respondents who will report to update the inventory, and 1 hour for respondents who will only report inventory corrections. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Chemical Manufacturers.

Estimated number of respondents: 2,488 who will update the inventory and 350 who will make corrections.

Responses per respondent: 1.

Estimated total annual burden on respondents: 28,962.

Frequency of collection: Every four years.

Send comments regarding the burden estimate, or any other aspect of this

information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460, and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: April 20, 1990.

Paul Lapsley,

Regulatory Management Division.

[FR Doc. 90-9723 Filed 4-25-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44550; FRL 3741-5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on triethylene glycol monomethyl, monoethyl, and monobutyl ethers (CAS Nos. 112-35-6, 112-50-5 and 143-22-6), and alkyl phthalates (CAS No. 117-81-7) submitted pursuant to a testing consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for triethylene glycol monomethyl, monoethyl, and monobutyl ethers were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on April 3, 1990. The submissions describe the oral developmental toxicity studies in rabbits and pregnant rats. Developmental toxicity studies are required by this consent order. These chemicals are used primarily as diluents for brake fluids.

Test data for alkyl phthalates were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on April 5, 1990. The submission describes the analytical characterization of phthalate esters and (14C)-labelled phthalate esters-di(2-ethylhexyl) phthalate. This test is required by this consent order. This chemical is used primarily as a plasticizer.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44550). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: April 17, 1990.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-9722 Filed 4-25-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL RESERVE SYSTEM

The Bank of Nova Scotia, Toronto, Ontario, Canada; Proposal To Act as Agent in the Private Placement of all Types of Securities and Purchase and Sell all Types of Securities on Order of Customers as Riskless Principal

The Bank of Nova Scotia, Toronto, Ontario, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for prior approval to engage *de novo* through its indirect subsidiary, ScotiaMcLeod (USA) Inc., New York, New York ("Company"), in acting as agent in the private placement of all types of securities and acting as riskless principal in buying and selling all types of securities on the order of customers. Applicant proposes to conduct these activities throughout the United States.

Company is currently authorized to

conduct the following activities under section 4(c)(8) of the BHC Act: (1) Providing brokerage and investment advisory services to institutional customers; (2) providing advice in connection with financial transactions; (3) providing financial advice to the Canadian federal and provincial governments, such as with respect to the issuance of their securities in the United States; (4) providing discount brokerage services; (5) providing portfolio investment advice and research and furnishing general economic information and advice; (6) underwriting and dealing in securities eligible to be underwritten and dealt in by U.S. member banks; and (7) underwriting and dealing in, to a limited extent, debt and equity securities. The Bank of Nova Scotia, 74 Federal Reserve Bulletin 248 (1988); The Bank of Nova Scotia, Federal Reserve Bulletin—(April 2, 1990).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with the Board's approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." 12 U.S.C. 1843(c)(8). The Board has previously determined that acting as agent in the private placement of all types of securities and acting as riskless principal in buying and selling all types of securities on the order of customers are closely related and proper incidents to banking. Bankers Trust New York Corporation, 74 Federal Reserve Bulletin 829 (1989) ("Bankers Trust Order"); J.P. Morgan & Company Incorporated, 76 Federal Reserve Bulletin 26 (1990) ("Morgan Order").

Applicant has proposed to act as agent in the private placement of all types of securities and to act as riskless principal in buying and selling securities on the order of customers, subject to the prudential limitations set forth in the *Bankers Trust Order* as modified by the *Morgan Order*. Applicant has proposed to modify these limitations to account for its status as a foreign bank, in accordance with prior Board orders. Canadian Imperial Bank of Commerce, The Royal Bank of Canada, and Barclays PLC, 76 Federal Reserve Bulletin 158 (1990).

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh

possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." 12 U.S.C. 1843(c)(8). Applicant contends that permitting Applicant to engage in the proposed activities would result in increased competition, greater convenience to customers, and increased efficiency in the provision of financial services.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicant asserts that, in accordance with the Board's determinations in the *Banker Trust Order* and *Morgan Order*, the proposed private placement and riskless principal activities, when conducted subject to certain limitations, do not constitute the underwriting of or dealing in securities.

In publishing the proposal for comment the Board does not take an position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 15, 1990. Any request for a hearing on this application must be accompanied, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, April 20, 1990.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 90-9661 Filed 4-25-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F-0122]

Rheox, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rheox, Inc. (formerly NL Chemicals, Inc.), has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,6-hexanediol as a component of the gelling agent disalkyldimethylammonium aluminum silicate and to increase the currently permitted use level of the gelling agent in mineral oil lubricants.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4174) has been filed by Rheox, Inc. (formerly NL Chemicals, Inc.), Wyckoffs Mill Rd., Hightstown, NJ 08520, proposing that § 178.3570 Lubricants with incidental food contact (21 CFR 178.3570) be amended to provide for the safe use of 1,6-hexanediol as a component of the gelling agent dialkyldimethylammonium aluminum silicate and to increase the currently permitted use level of the gelling agent in mineral oil lubricants, from 7 percent maximum to 15 percent maximum.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: April 17, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-9690 Filed 4-25-90; 8:45 am]

BILLING CODE 4180-01-M

[Docket No. 89N-0348]

Guidelines for Scientific Review of Enteral Food Products for Special Medical Purposes; Announcement of Availability of Tentative Report and Opportunity for Public Comment

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of, and the opportunity for public comment on, a tentative report on the scientific rationale for the use of certain types of medical foods and guidelines for evaluating studies designed to substantiate the safety and suitability of medical foods for their intended uses. The report and guidelines were prepared by the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB).

DATES: The tentative report will be available publicly on or before April 30, 1990; written comments on the tentative report should be received by June 18, 1990.

ADDRESSES: Submit written requests for single copies of the tentative report to the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the tentative report to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The tentative report and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, and at the LSRO.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, or Susan M. Pilch, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

In the *Federal Register* on September 22, 1989 (54 FR 39049), FDA announced

that it had asked the LSRO of FASEB, as a task under the contract, to prepare a summary of the scientific rationale for the use of certain categories of enteral food preparations and to develop guidelines for evaluating studies useful in substantiating the safety and suitability of medical foods for their intended purposes. The types of medical foods included in the study are those products formulated for persons with end-stage renal disease, preparations containing branched-chain amino acids formulated for dietary management of hepatic diseases and hepatic coma, products formulated for persons with pulmonary diseases, products useful in dietary management of trauma or other hypermetabolic conditions, and other product categories as designated by FDA.

Pursuant to that announcement, FDA is now announcing that FASEB will make publicly available on or before April 30, 1990, its tentative report on the scientific rationale for use, and guidelines for evaluating the safety and suitability, of enteral food products for special medical purposes. Pursuant to its contract with FDA, FASEB will provide the agency with a final scientific report on these issues on or before August 31, 1990.

Dated: April 20, 1990.
Alan L. Hoeting,
Acting Associate Commissioner for
Regulatory Affairs.
[FR Doc. 90-9732 Filed 4-25-90; 8:45 am]
BILLING CODE 4160-01-M

Industry Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following industry exchange meeting: Dallas District Office, chaired by Gerald E. Vince, District Director. The topics to be discussed will be the regulatory aspects of product development and marketing in the United States, and current issues affecting regulated industry.

DATES: Wednesday, May 23, 1990, 8 a.m. to 12:30 p.m.

ADDRESSES: Labaron Hotel, Gallery Room, 1055 Regal Row, Dallas, TX 75247.

FOR FURTHER INFORMATION CONTACT: Harold Jones, Small Business Representative, Food and Drug Administration, Southwest Region, 3032 Bryan St., Dallas, TX 75204, 214-655-5315.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to identify current and future industry issues and concerns, to encourage industry participation in the agency's rulemaking and policy decisions, to identify resources within FDA available to industry, and to identify audiences and needs for future educational programs. The meeting will provide a forum for regulated industry to express their concerns about FDA and discuss the agency's operations and procedures.

Dated: April 20, 1990.
Alan L. Hoeting,
Acting Associate Commissioner for
Regulatory Affairs.
[FR Doc. 90-9731 Filed 4-25-90; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Maternal and Child Health Research Grants Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1990:

Name: Maternal and Child Health Research Grants Review Committee
Date and Time: June 13-15, 1990, 9 a.m.

Place: Days Inn Congressional Park, 1775 Rockville Pike, Rockville, Maryland 20852.

Open on June 13, 1990, 9 a.m.-10 a.m.

Closed for remainder of meeting

Purpose: To review research grant applications in the program area of maternal and child health administered by the Bureau of Maternal and Child Health and Resources Development.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health Program Coordination and Systems Development, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on June 13, at 10 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr. Ph.H.,

Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 9-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Agenda Items are subject to change as priorities dictate.

Dated: April 23, 1990.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 90-9689 Filed 4-25-90; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of National Digestive Diseases Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on May 8, 1990. The meeting will begin at 8:30 a.m. and adjourn at 3:45 p.m. The meeting, which will be open to the public, will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting will include a conference on liver transplantation as well as discussion regarding the Board's activities and continued evaluation of the implementation of the long-range digestive diseases plan. The conference portion of the meeting will enable the Board to develop a position statement on selected issues regarding liver transplantation that will aid the Board in its subsequent recommendations. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: April 20, 1990

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 90-9651 Filed 4-25-90; 8:45 am]

BILLING CODE 4140-01-M

Consensus Development Conference on Intravenous Immunoglobulin; Prevention and Treatment of Disease; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Intravenous Immunoglobulin:

Prevention and Treatment of Disease" sponsored by the National Institute of Allergy and Infectious Diseases and by the NIH Office of Medical Applications of Research. The conference will be held May 21-23, 1990, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland, 20892.

The use of intravenous immunoglobulin (IVIG) has increased significantly in recent years. IVIG has been used in such diverse diseases as primary immunodeficiencies, pediatric AIDS, infections in low birthweight infants, bone marrow transplantation, B lymphocyte malignancies, idiopathic thrombocytopenic purpura, Kawasaki's syndrome, and demyelinating polyneuropathies. However, important questions regarding its use still remain. The purpose of this Consensus Development Conference is to consider the usefulness of IVIG in various diseases.

The conference will bring together biomedical scientists from various disciplines, including immunology, infectious diseases, and pediatrics, as well as health care providers, patients and their families, and the public.

Following a day-and-a-half of presentations and discussions, a Consensus Panel will weigh the scientific evidence and write a draft statement in response to the following questions:

- What are the data to support the efficacy of IVIG in these circumstances?
- What are the appropriate dosage and treatment schedules?
- What are the risks involved in the use of IVIG?
- What are the mechanisms of action?
- Are all IVIG preparations equally efficacious?
- What are the directions for future research?

On the final day of the meeting, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Conference Registrar, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-6338.

Dated: April 18, 1990.

William F. Raub,
Acting Director, NIH.

[FR Doc. 90-9650 Filed 4-25-90; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research, Meeting of National Advisory Council for Nursing Research, Steering Committee for National Nursing Research Agenda

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Steering Committee for the National Nursing Research Agenda (NNRA), National Advisory Council for Nursing Research, National Center for Nursing Research, on Wednesday, June 6, 1990, from 1:30 to 5 pm in Building 38A, Room B1N30B.

This meeting will be open to the public. The agenda will include an update on the National Nursing Research Agenda.

Attendance by the public will be limited to space available.

Dr. Doris Bloch, Executive Secretary, Steering Committee, NNRA, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B23, Bethesda, Maryland 20892, (301) 496-0207, will provide a summary of the meeting, roster of steering committee members, and substantive program information upon request.

Dated: April 20, 1990.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 90-9652 Filed 4-25-90; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Thursday, May 31, 1990.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: May 31, 1990, 9 a.m. to 4:30 p.m., Stonehenge (Secretary's Conference Room), 200 Independence Avenue SW., Washington, DC 20201. Open, except for working lunch, 12:45 p.m. to 2:30 p.m.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion.

Agenda: This will be the sixth meeting of the Secretary's Council. The theme of this meeting is "Paying for Prevention Services." Sessions will include reports from national

health reform committees and presentations on methods and models for reimbursement of preventive services.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.

J. M. McGinnis,

Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 90-9734 Filed 4-25-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3064]

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.

ADDRESSES: 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.; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 16, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Comprehensive Improvement Assistance Program (CIAP): Evidence of Consultation

Office: Public and Indian Housing

Description of the need for the information and its proposed use:

Public Housing Authorities are required to develop CIAP applications in consultation with residents, homebuyers, and local governments. The Department requires evidence of consultation to assure compliance with this statutory requirement.

Form number: None

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of submission: Annually
Reporting burden:

	Number of respondents	× Frequency of response	× Hours per response	= Burden hours
Resident consultation.....	1,600	1.5	6	14,400
Homebuyer consultation.....	60	4.0	6	1,440
Local consultation.....	1,600	1.0	1.5	2,400

Total estimated burden hours: 18,240

Status: Reinstatement

Contact: Pris P. Buckler, HUD, (202) 755-6640, John Allison, OMB, (202) 395-6880

Dated: April 16, 1990.

[FR Doc. 90-9623 Filed 4-25-90; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-90-3065]

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: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: April 17, 1990.

John T. Murphy,
Director, Information Policy and Management
Division.

Proposal: Housing Counseling Program
and Recordkeeping Requirements
(Non-Funded)

Office: Housing

Description of the need for the
information and its proposed use: The
information collected will determine if
applicants are eligible to become
HUD-approved counseling agencies. It
will also be used to approve

applicants as HUD-approved housing
counseling agencies, to record the
delivery of housing counseling
services and to annually recertify
HUD-approved counseling agencies.

Form number: HUD-9900, 9902, 9903,
and 9909

Respondents: State or Local
Governments and Non-Profit
Institutions

Frequency of submission: State or Local
Governments and Non-Profit
Institutions

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD-9900	25		1		54		1,350
HUD-9902	475		2		1.16		1,108
HUD-9903	4,166		1		.08		347
HUD-9909	1,000		1		.25		250
Recordkeeping	5,666		1		1		5,666

Total estimated burden hours: 8,721

Status: Extension

Contact: William Feingold, HUD, (202)
755-6664, John Allison, OMB, (202)
395-6880

Date: April 17, 1990.

Proposal: Housing Counseling Program
and Recordkeeping Requirements
(Funded) Counseling Activity and
Unit Log

Office: Housing

Description of the need for the
information and its proposed use: This
information collection is necessary to
meet the requirements of the housing
counseling grant agreement, to obtain
data needed to prepare and support
the housing counseling invoices, to
obtain recommendations from
grantees for improving the program
and reducing burden, and to monitor

the agencies to determine whether
they should be decertified and their
housing counseling grant agreement
terminated.

Form number: HUD-9921

Respondents: State or Local
Governments and Non-Profit
Institutions

Frequency of submission:
Recordkeeping and Quarterly
Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Quarterly performance report	200		4		.5		400
Final report	200		1		3		600
Recordkeeping	200		1		35		7,000

Total estimated burden hours: 8,000

Status: Extension

Contact: William Feingold, HUD, (202)
755-6664, John Allison, OMB, (202)
395-6880

Date: April 17, 1990.

Proposal: HUD Acquisition Regulation
Office: Administration

Description of the need for the

information and its proposed use: The
HUD Acquisition Regulation was
issued to implement and supplement
the Federal Acquisition Regulation.
The information collection required of
the public is solely in connection with
the procurement process.

Form number: HUD-770, HUD-444.1,
and HUD-661.1

Respondents: Individuals or
Households, State or Local
Governments, Businesses or Other
For-Profit, Non-Profit Institutions, and
Small Businesses or Organizations

Frequency of submission: On Occasion
Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection							
Preparation of consolidated supply program bid	300		1		8		2,400
Organizational conflicts of interest certification	300		1		.02		6
Organizational conflicts of interest clause	5		1		.5		2.5
Proposal outline determination	300		1		195		58,500
Determination of award fee earned	8		1		2		16
Key personnel	30		1		4		120
Clearance of personnel	5		1		5		25
Project management system	600		1		8		4,800
Contract employee travel	50		1		.5		25
Report of inventions and subcontracts	1		1		.2		.2
Contractor's release and assignment of rebates	150		1		5		75

Total estimated burden hours: 65,970
 Status: Revision
 Contact: Gladys Gines, HUD, (202) 755-5294, John Allison, OMB, (202) 395-6880

Date: April 17, 1990
 [FR Doc. 90-9624 Filed 4-25-90; 8:45 am]
 BILLING CODE 4210-01-M

[Docket No. N-90-3063]

Notice of 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.

ADDRESSES: 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: April 18, 1990.

John T. Murphy,
 Director, Information Policy and Management Division.

Proposal: Community Development Block Grants: State's Program
Office: Community Planning and Development

Description of the need for the information and its proposed use: Sections 104(a) and (3) of the Housing and Community Development Act of 1974, as amended, require states to submit a Final Statement and a Performance and Evaluation Report to the Department and to maintain records concerning the use of funds made available under Section 106 of the Act for HUD to determine statutory compliance.

Form number: None

Respondents: State Or Local Governments

Frequency of submission: Annually
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting.....	49		2		308		30,184
Recordkeeping.....	49		1		60		2,940

Total estimated burden hours: 33,124
 Status: Revision
 Contact: Richard Kennedy, HUD (202) 755-6322 John Allison, OMB, (202) 395-6880

Date: April 18, 1990.
 [FR Doc. 90-9625 Filed 4-25-90; 8:45 am]
 BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. N-90-3066]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/DEPT-2, Accounting Records.

EFFECTIVE DATES: This amendment shall become effective without further notice in 30 calendar days, May 26, 1990, unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Donna L. Eden, Privacy Act Officer, Telephone Number (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HUD/DEPT-2 contains a variety of records relating to the Department's accounting functions. It currently includes records from the Title II FHA Programs. HUD/DEPT-2 is being amended to include records from the Title I FHA Programs and Section 312, Rehabilitation Loans Program. Specifically, this amendment is being made to reflect the Department's intention to maintain and use records

that will identify all individuals who are in default on direct or guaranteed HUD loans, were previously in default on direct or guaranteed HUD loans, and are delinquent on other debts owed to HUD.

This amendment will enable HUD to maintain a set of records that can be used by HUD to prescreen individual applicants for creditworthiness and to verify information on their applications. These records will be checked prior to approving an individual's application to receive a guaranteed HUD loan or a direct loan. The use of these records will provide HUD information needed to reject applications from individuals who have previously defaulted on HUD loans.

The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general routine uses applicable to all of the Department's systems of records were published in

the "Federal Register Privacy Act Issuances, 1987 Compilation, Volume II."

Authority: 5 U.S.C. sec. 552a, 88 Stat. 1896; sec. 7(d), Department of HUD Act (42 U.S.C. sec. 3535(d)).

Issued at Washington, DC, April 18, 1990.

Claire E. Freeman,

Assistant Secretary for Administration.

HUD/DEPT-2

SYSTEM NAME:

Accounting Records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors; mortgagees; grant/project and loan applicants and recipients; HUD personnel; vendors; brokers; bidders; managers; tenants; individuals within Disaster Assistance Programs: builders, developers, contractors, and appraisers; individuals writing to the Department; employees on HUD/FHA projects; investors; subjects of audits; closing agents; former mortgagors and purchasers of HUD-owned properties; manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans; and, rehabilitation loan debtors who are delinquent or in default on their loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lease and collection register; schedules of payments receivable and received; premiums due; claims files and fee billing statements; escrow and Certificates of Deposit files; cash flow and budget control files; earnest money register; purchase order log; imprest fund; Field managers' accounting records: Restitution, maintenance, and market expresses; distributive shares records; salary; savings bonds; bills of lading; vouchers; invoices; receipts; cancelled checks; mortgages, builders' and contractors' financial statements, records and audit reports; requests for termination for home mortgage insurance; deposit and receipt records; detailed accounting reports concerning diversified payments, disbursements, and cancelled checks; repurchases of mortgages; adjustments from recoveries, manual adjustments, and defaults; acquired home property records; sales closing papers; statement of accounts; tax records; notes; records of claims and chargeoffs; repayment agreements; credit reports; financial statements; records of foreclosures; and, collection and field reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in the prefatory statement. Other routine uses: U.S. Treasury—for disbursements and

adjustments thereof; Internal Revenue Service—for reporting of sales commissions and to obtain current mailing addresses; General Accounting Office, General Services Administration, Department of Labor, Labor housing authorities, and taxing authorities—for audit, accounting and financial reference purposes; mortgage lenders—for accounting and financial reference purposes, for verifying information provided by new loan applicants and evaluating creditworthiness; HUD contractor—for debt and/or mortgage note servicing; to financial institutions that originated or serviced loans—to give notice of disposition of claims; to title insurance companies—for payment of liens; to local recording offices—for filing assignments of legal documents, satisfactions, etc.; to other Federal agencies—for the purpose of collecting debts owed to the Federal Government by administrative or salary offset; to consumer credit reporting agencies—for protecting private sector institutions that extend credit, and to encourage debtors to repay their legitimate debts.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

Security checks, limited authorizations and access, security guards; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records; access to automated systems by authorized users by passwords and code identification cards.

[FR Doc. 90-9622 Filed 4-25-90; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-020-00-4760-02]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will meet on May 24, 1990. The meeting will convene at 8:30 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) Plan amendment briefing, (2) District budget process briefing, (3) Hazardous materials update, (4) Drought situation briefing. A field tour will leave the District Office at 10:30 a.m. and return at 4 p.m.

The meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will begin at 10:15 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed. Individuals wishing to attend the field tour must provide their own transportation.

Minutes of the Council meeting will be maintained in the District Office and will be available for public inspection during regular business hours.

DATES: May 24, 1990.

ADDRESSES: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Gerald Quinn, Burley District Manager, (208) 678-5514.

Dated: April 20, 1990

Gerald L. Quinn,
District Manager.

[FR Doc. 90-9686 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-GG-M

[OR-014-00-4351-02; GPO-209]

Lakeview District Multiple Use Advisory Council Tour; Meeting Date

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a meeting date for the Lakeview District Multiple Use Advisory Council Tour.

SUMMARY: The Lakeview District Multiple Use Advisory Council will be meeting on May 24, 1990 for a tour of the Gerber Riparian Demonstration Area. The tour will leave the Gerber Guard Station at 10 a.m. The public is invited to attend, but must notify the Lakeview District Office by May 18, 1990 in order for transportation arrangements to be made.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, Lakeview District, Bureau of Land

Management, P.O. Box 151, Lakeview,
OR 97630, (503) 947-6110.
Judy Ellen Nelson,
District Manager.
[FR Doc. 90-9685 Filed 4-25-90; 8:45 am]
BILLING CODE 4310-33-M

[AZ-050-0-4212-13; CAAZCA-26416]

**California; Realty Action,
Noncompetitive Sale of Public Lands
in San Bernardino County**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of Realty Action—
noncompetitive sale of public land in
San Bernardino County, California.

SUMMARY: The following described
lands and interests therein have been
examined and determined to be suitable
for disposal by sale under section 203 of
the Federal Land Policy and
Management Act of 1976 (90 Stat. 2750,
43 U.S.C. 1713), at appraised fair market
value.

San Bernardino Meridian, California

T. 8 N., R. 23 E.,

Sec. 4, lot 4 (containing 40.09 acres, more or
less)

The disposal of this land to Quinto
Polidori would provide a more
manageable land ownership pattern and
recognize equitable considerations, and
as such, best serve the public interest.
This sale is consistent with the Bureau
of Land Management planning for these
lands involved and has been
coordinated with San Bernardino
County, the City of Needles, and
California State Government officials.
The public land sold will be subject to
existing encumbrances, including the
encumbrances listed below:

1. A right-of-way thereon for ditches
and canals constructed by the authority
of the United States, Act of August 30,
1890 (26 Stat. 391; 43 U.S.C. 945).

2. Reserving an easement and right-of-
way over, across, and upon a strip of
land 50 feet wide and approximately
1,000 feet long extending from the north
and exiting on east side of lot 4, sec. 4,
T. 8 N., R. 23 E., San Bernardino
Meridian, California, as shown on the
official U.S. Geological Survey map
(Needles, California-Arizona, 7 1/2'
quadrangle, photorevised 1975), and
further known locally as Ice House
Road, for the full use as a road by the
United States and its assigns, licensees,
and permittees, including the right of
access and use for and by the people of
the United States.

There are no known locatable mineral
values in the land. If Quinto Polidori
wishes, the Party may apply for the

reserved mineral estate under
provisions of section 209(b) of the
Federal Land Policy and Management
Act of October 21, 1976 (90 Stat. 2757; 43
U.S.C. 1718).

Publication of this Notice will
segregate the subject lands from all
appropriations under the public land
laws, including the mining laws, but not
mineral leasing laws. This segregation
will terminate upon the issuance of a
document conveying such lands, 2 years
from the date of publication, or upon
publication of Notice of Termination.

DATES: 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, Yuma District Office, 3150
Winsor Avenue, Yuma, Arizona 85365.
Any adverse comments will be
evaluated by the State Director who
may sustain, vacate, or modify this
realty action. In the absence of any
objections, this realty action will
become the final determination of the
Department of the Interior.

FOR FURTHER INFORMATION CONTACT:
Mike Ford, Area Manager, Havasu
Resource Area, 3189 Sweetwater
Avenue, Lake Havasu City, Arizona
86403.

Dated: April 18, 1990.

Herman L. Kast,

District Manager.

[FR Doc. 90-9687 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-32-M

[CO-942-90-4730-12]

Colorado; Filing of Plats of Survey

April 17, 1990.

The plat of survey of the following
described land will be officially filed in
the Colorado State Office, Bureau of
Land Management, Lakewood,
Colorado, effective 10 a.m., April 17,
1990.

This plat (in 2 sheets) representing the
dependent resurvey of a portion of the
Eleventh Standard Parallel North,
through Ranges 12 and 13 West, the
south boundary, portions of the west
boundary, and subdivisional lines, the
subdivision of section 3, and a metes-
and-bounds survey in certain sections,
T. 44 N., R. 12 W., New Mexico Principal
Meridian, Colorado, Group No. 917, was
accepted March 2, 1990.

This plat (in 3 sheets) representing the
dependent resurvey of portions of the
east and west boundaries and
subdivisional lines, the subdivision of
section 7, and a metes-and-bounds
survey in section 2, T. 43 N., R. 12 W.,
New Mexico Principal Meridian,

Colorado, Group No. 917, was accepted
March 2, 1990.

This supplemental plat correcting the
acreage of lot 78 in the northwest
quarter of section 3, T. 15 S., R. 70 W.,
Sixth Principal Meridian, Colorado, was
accepted March 27, 1990.

The plat of survey of the following
described land will be officially filed in
the Colorado State Office, Bureau of
Land Management, Lakewood,
Colorado, effective 10 a.m., June 1, 1990.

This plat representing the metes-and-
bounds survey of Public Land Tract 65,
T. 43 N., R. 11 W., New Mexico Principal
Meridian, Colorado, Group No. 917, was
accepted March 2, 1990.

These surveys were executed to meet
certain administrative needs of this
Bureau.

All inquiries about this land should be
sent to the Colorado State Office,
Bureau of Land Management, 2850
Youngfield Street, Lakewood, Colorado
80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90-9688 Filed 4-25-90; 8:45 am]

BILLING CODE 4310-JB-M

**INTERSTATE COMMERCE
COMMISSION**

[Finance Docket No. 31644]

**Exemption; American Railway Corp. of
Texas and Floydada and Plainview
Railroad Co.—Acquisition and
Operation Exemption—Line of the
Atchison, Topeka and Santa Fe
Railway Co.**

American Railway Corporation of
Texas (ARCT) and Floydada and
Plainview Railroad Co. (F&P),
noncarriers, have filed a notice of
exemption to acquire and operate
approximately 27 miles of rail line
owned by The Atchison, Topeka and
Santa Fe Railway Company (Santa Fe)
extending between Plainview Junction,
TX (milepost 0.0) and Floydada, TX
(milepost 27.0). ARCT will acquire the
rail line from Santa Fe and immediately
transfer the assets to F&P, which will
operate the line. ARCT will retain
control of F&P. In Finance Docket No.
31645, filed simultaneously with this
notice, ARCT and Seagraves, Whiteface
and Lubbock Railroad Co. (SW&L) have
filed a notice of exemption to acquire
and operate another, nonconnecting
line, from Santa Fe, also in Texas. In
that transaction the line will also be
acquired by ARCT and immediately
transferred to SW&L, which will operate
the line. ARCT will also retain control of

SW&L. Since it will be in control of two nonconnecting carriers, ARCT has also filed simultaneously in Finance Docket No. 31647 a notice of exemption under 49 CFR 1180.2(d)(2).

Any comments must be filed with the Commission and served on: (a) Thomas J. Kelly, Pedersen & Houpt, P.C., 180 North LaSalle Street, Suite 3400, Chicago, IL 60601; and (b) Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

Applicants shall retain their interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.¹

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 20, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-9702 Filed 4-25-90; 8:45 am]

BILLING CODE 7035-01-M

Pioneer Railroad Co., Inc., Continuance in Control Exemption

[Finance Docket No. 31622]

Pioneer Railroad Company, Inc. (Pioneer) has filed a notice of exemption to continue to control Wabash & Grand River Railway Co. (WGR). Pioneer currently controls the West Jersey Railroad Division, which operates a rail line in New Jersey. WGR, a noncarrier, was formed by Pioneer to lease and operate a 37.6-mile rail line between Kelly and Chillicothe, MO. WGR has concurrently filed a notice of exemption in Finance Docket No. 31621, *Wabash & Grand River Railway Co.—Lease and Operation Exemption—Green Hills Rural Development, Inc.*, for lease and operation.

Pioneer indicates that: (1) The railroads will not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad

in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any comments must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street NW., Suite 1107, Washington, DC 20006.

Decided: April 20, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-9691 Filed 4-25-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

April 18, 1990.

The Office of Management and Budget (OMB) has been sent the following collection of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information: (1) The title of the form/collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and (7) an indication as to whether section 3504(h) of Public Law 95-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated public burden and the associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke,

on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, and to Mr. Larry E. Miesse, DOJ clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) 1990 SAMPLE SURVEY OF LAW ENFORCEMENT AGENCIES.

(2) CJ-44 (large agencies), CJ-44A (small agencies). Bureau of Justice Statistics, Office of justice Programs.

(3) Periodic, every three years.

(4) State or local governments. This survey is used to collect voluntary administrative and management statistical information from a nationally representative sample of law enforcement agencies in the United States in order to provide basic information on their workloads and resources.

(5) 3,200 estimated respondents at 1.25 hours each.

(6) 4,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, U.S.
Department of Justice.

[FR Doc. 90-9678 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-18-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 a proposed consent decree in *United States v. Allsteel, Inc.* was lodged with the United States District Court for the Northern District of Illinois. The consent decree resolves claims brought pursuant to section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), involving the emission of volatile organic compounds ("VOCs") from Allsteel's Aurora, Illinois manufacturing facility which are caused by the spray-painting and coating of the metal furniture produced at the plant.

¹ Applicants certify that they have identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

The proposed consent decree requires Allsteel to pay a civil penalty of \$26,500 to the United States Treasury. The decree also requires Allsteel to submit to the U.S. Environmental Protection Agency on a monthly basis for the duration of the decree data documenting the VOC content of the coatings used by the company. The decree also establishes an overall cap on the VOC content of the coatings used at the plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments related to the proposed consent decree. Comments should be relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Allsteel, Inc.* D.J. Ref. 90-5-2-1-1037.

The proposed consent decree may be examined at the office of the United States Attorney, room 1500, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, IL 60604, and at the Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 111 West Jackson Street, Third Floor, Chicago, IL 60604.

Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States. In requesting a copy, please refer to the referenced case name and D.J. Ref. number.

George W. Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-9877 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 13, 1990 a proposed Consent Decree in *United States v. Occidental Chemical Company, Inc.* (E.D. Pa.), Civil Action No. 89-5687 was lodged with the United States District Court for the Eastern District of

Pennsylvania. The Consent Decree concerns alleged violations of the Vinyl Chloride National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.60 *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.* ("the Act"), at defendant Occidental Chemical Company, Inc.'s ("Occidental") polyvinyl chloride plant in Pottstown, Pennsylvania.

The proposed Consent Decree requires defendant Occidental (1) to pay a civil penalty of \$687,223.75; (2) to purchase, install and commence operation of a new incinerator and continuous emission monitoring system ("CEM") on or before June 15, 1990; (3) to install and commence operation of an automatic computerized stopper addition system, an emergency back-up power system to operate the automatic stopper system, and an enhanced vinyl chloride recovery system on or before December 31, 1991, as part of an effort to completely prevent manual vent valve and relief valve discharges at the Pottstown Plant; (4) to implement a program to provide extensive training to its employees, and to ensure that only trained employees operate vinyl chloride equipment on or before October 31, 1990; (5) to conduct a performance audit every fourteen months, and report the results to EPA; and (6) to comply with the vinyl chloride NESHAP. The Consent Decree provides a detailed schedule for completion of these projects, and provides for stipulated penalties for noncompliance.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Occidental Chemical Company, Inc.*, D.J. No. 90-5-1-1-3299.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1300, Philadelphia, Pennsylvania 19106 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section,

Lands and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$8.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

George W. Van Cleve,

Acting Assistant Attorney General, Lands and Natural Resources Division.

[FR Doc. 90-9676 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") on April 3, 1990 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership of COS. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On May 14, 1988, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on June 11, 1988 (51 FR 21260). On August 6, 1988, September 30, 1988, January 2, 1987, March 24, 1987, June 12, 1987, July 23, 1987, July 31, 1987, October 5, 1987, October 23, 1987, November 16, 1987, January 12, 1988, February 9, 1988, May 2, 1988, October 20, 1988, March 15, 1989, and August 30, 1989, COS filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on September 4, 1988 (51 FR 31735), October 28, 1988 (51 FR 39434), February 13, 1987 (52 FR 4671), April 24, 1987 (52 FR 13769), July 21, 1987 (52 FR 27473), October 7, 1987 (52 FR 37539), November 9, 1987 (52 FR 43138), December 4, 1987 (52 FR 46129), December 15, 1987 (52 FR 47642), December 18, 1987 (52 FR 48164), February 19, 1988 (53 FR 5060), March 8, 1988 (53 FR 7411), June 30, 1988 (53 FR 24811), November 25, 1988 (53 FR 47773), April 20, 1989 (54 FR 16013), and October 17, 1989 (54 FR 42576), respectively.

On January 1, 1990, Gandalf, Inc. and Pacific Gas and Electric Company became members of COS, and Network

Systems, Concurrent Computer, Intel Corporation, National Semiconductor Corporation, Texas Instruments, Data Connection, Honeywell Inc., and Apollo ceased their membership in COS.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-9674 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-01-M

National Cooperative Research Act of 1984; Dialkyl Project

Notice is hereby given that, on March 20, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Lonza, Inc. has filed written notification simultaneously with the Attorney General and the Federal Trade Commission regarding an Amendment to the Dialkyl 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 circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Amendment of the Dialkyl Project and its general areas of planned activities are given below.

The parties to the Amendment are the same as those to the original agreement. The objective of the Amendment is to include additional testing required by the EPA reregistration notice for these compounds published at 54 FR 30846 (July 24, 1989). The results of such research will be submitted to EPA in connection with the reregistration of pesticides containing these compounds as active ingredients.

No other changes have been made in either the membership or planned activity of the group research project.

On August 3, 1988, the Dialkyl Project filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on August 25, 1988, 53 FR 32480.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-9675 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Richard Rowland Dickerson, M.D.; Revocation of Registration

On October 14, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard Rowland Dickerson, M.D. of 2 East Williamsburg

Road, Sandston, Virginia 23150, proposing to revoke his DEA Certificate of Registration AD7175878, and to deny any pending applications for renewal of such registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Dickerson's lack of authorization to handle controlled substances in the Commonwealth of Virginia. 21 U.S.C. 824(a)(3).

A returned registered mail receipt indicates that the Order to Show Cause was received by Dr. Dickerson on May 29, 1989. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Therefore, the Acting Administrator concludes that Dr. Dickerson has waived his opportunity for a hearing on the issues raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Acting Administrator finds that on October 6, 1987, an administrative hearing was held by the Virginia Board of Medicine. By Order dated December 11, 1987, the Board indefinitely suspended Dr. Dickerson's license to practice medicine. On June 30, 1987, Dr. Dickerson's license to handle controlled substances expired, thereby terminating his authority to prescribe, dispense, administer or otherwise handle controlled substances in the Commonwealth of Virginia. The Acting Administrator concludes that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f); *Myong S. Yi, M.D.*, 54 FR 30618 (1989); *Clifford E. Bigott, D.M.D.*, Docket No. 88-24, 53 FR 28711 (1988); *Howard J. Reuben, M.D.*, 52 FR 8375 (1987); *Ramon Pla, M.D.*, Docket No. 88-54, 51 FR 41168 (1986); and cases cited therein.

Having considered the facts and circumstances in this matter, the Acting Administrator concludes that Dr. Dickerson's DEA Certificate of Registration should be revoked due to his lack of authorization to handle controlled substances in the Commonwealth of Virginia. Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AD7175878, previously issued to Richard Rowland Dickerson, M.D., be, and it hereby is, revoked. The Acting Administrator

further orders that all pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective May 29, 1990.

Dated: April 19, 1990.

Terrence M. Burke,

Acting Administrator.

[FR Doc. 90-9627 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-08-M

National Institute of Justice

Body Armor Users Workshop; Meeting

AGENCY: National Institute of Justice.

ACTION: Notice of Meeting: Body Armor Users Workshop.

The National Institute of Justice will be hosting a Body Armor Users Workshop on June 6, 1990, from 9 a.m. to 4:30 p.m. at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia. The workshop is open to all interested parties and will serve as a forum for ballistic fiber manufacturers, weavers, and body armor manufacturers to share information about their products and to address the armor concerns of law enforcement representatives. Formal presentations will be made by several ballistic fiber manufacturers concerning new developments in fiber technology. For further information, please contact the Technology Assessment Program Information Center at 1-800-248-2742 or 301-251-5060.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 90-9679 Filed 4-25-90; 8:45 am]

BILLING CODE 4410-36-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts National Council; Meeting

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 National Council on the Arts will be held on May 11-12, 1990 from 9 a.m. to 5 p.m., and on May 13, 1990 from 9 a.m. to 1 p.m. at the Winston Plaza Hotel, Winston-Salem, North Carolina.

A portion of this meeting will be open to the public on Friday, May 11 from 9 a.m. to 5 p.m., and on Saturday, May 12 from 9 a.m. to 4:15 p.m. The topics for discussion will include Legislative Update; Report on Emergency Grants; Dance on Tour National Plan; Report on Celebrate Creative America; Program

Review and Guidelines for Dance Program, Folk Arts Program, States Program, Expansion Arts Program, Literature Program; Music Guidelines for Professional Training, Recording, and Centers for New Music Resources; Discussion on Open Council Meetings; Southern Arts Federation Presentation; and the FY 92 Budget.

The remaining sessions on Saturday, May 12, from 4:15 p.m.-5 p.m. and on Sunday, May 13, from 9 a.m.-1 p.m. are for the purpose of Council 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, this session will be closed to the public pursuant to subsections (c) (4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 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: April 23, 1990.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 90-9729 Filed 4-25-90; 8:45 am]
BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

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 Music Advisory Panel (Composers Fellowships Section) to the National Council on the Arts will be held on May 15-16, 1990, from 9 a.m.-5:30 p.m. and on May 17 from 9 a.m.-5 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 17 from 3 p.m.-5 p.m. The topic will be policy issues and guideline modifications.

The remaining portions of this meeting on May 15-16 from 9 a.m.-5:30 p.m. and on May 17 from 9 a.m.-3 p.m. are for the purpose of Panel review, discussion,

evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including 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.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 90-9730 Filed 4-25-90; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35):

1. Type of submission, new, revision, or extension: Revision
2. The title of the information, collection: Grant and Cooperative Agreement Provisions
3. The form number if applicable: Not applicable
4. How often the collection is required: Occasionally, Quarterly, Semi-Annually
5. Who will be required or asked to report: Grantees and Cooperators
6. An estimate of the number of responses: 161

7. An estimate of the total number of hours needed to complete the requirement or request: 1,515 (9.4 hours per response)

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable

9. Abstract: The Division of Contracts and Property Management uses provisions in its grants and cooperative agreements to ensure: adherence to Public Laws, that the Government's rights are protected, that work proceeds on schedule, and that disputes between the Government and the grantee/cooperator are settled.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project 3150-0107, Office of Management and Budget, Washington, D.C. 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 17th day of April 1990.

For the Nuclear Regulatory Commission.
George H. Messenger,
Acting Designated Senior Official for
Information Resources Management.
[FR Doc. 90-9726 Filed 4-25-90; 8:45 am]
BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35):

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information, collection: 10 CFR 9, Public Records.
3. The form number, if applicable: Not applicable.
4. How often the collection is required: Occasionally.
5. Who will be required or asked to report: Individuals requesting access

- to records under the Freedom of Information or Privacy Acts.
6. An estimate of the number of responses: 227.
 7. An estimate of the total number of hours needed to complete the requirement or request: 247 hours.
 8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.
 9. Abstract: Part 9 establishes information collection requirements for individuals making requests for records under the Freedom of Information or Privacy Acts. It also contains requests to waive or reduce fees for searching for and reproducing records in response to FOIA requests.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Paperwork Reduction Project (3150-2222), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 17th day of April 1990.

For the Nuclear Regulatory Commission.

George H. Messenger,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 90-9725 Filed 4-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-311]

Public Service Electric & Gas Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-75 issued to Public Service Electric & Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensees) for operation of the Salem Generating Station, Unit No. 2, located in Salem County, New Jersey.

The proposed amendment would revise Salem Unit 2 Technical Specifications to increase the Main Steam Isolation Valve (MSIV) allowable closure time. The proposal increases the MSIV allowable closure time from 5

seconds to 8 seconds until restart from the sixth refueling outage (currently scheduled for the fall, 1991). Subsequently, the applicable Engineered Safety Features response times are being revised to reflect the proposed increase in allowable MSIV stroke time. The amendment for Unit 1 is being processed under the emergency provisions of 10 CFR 50.91(a)(5).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

An increase in the allowable main steam isolation valve (MSIV) mechanical stroke time, provided in Technical Specification 3/4.7.1.5, from five to eight seconds.

This increase affects the total steam line isolation ESF response time. Two ESF signals resulting in steam line isolation are modelled in Salem's licensing basis safety analyses; steam flow in two steam lines-high coincident with steam line pressure-low; and containment pressure-high high. Technical Specification Table 3.3-5 currently allows a total ESF response time (signal processing plus valve stroke time) of seven and eight seconds, respectively. This proposed change increases the ESF response time for both signals to ten seconds.

A third steam line isolation ESF signal, steam flow in two steam lines-high coincident with Tavg-low low, is not modelled in the safety analyses, but is provided as additional backup protection. The proposed increase in allowable MSIV stroke time increases this signal's response time from 10.75 seconds to 13.75. This increase however, does not affect the licensing basis safety analyses.

The Salem Generating Station safety analyses which rely upon MSIV closure have been evaluated to account for the increased steam line isolation response time. The events reevaluated are: steam line break core response; steam line break mass/energy releases for inside containment integrity analysis and Environmental Qualification of equipment inside containment; steam line

break mass/energy releases for outside containment equipment Environmental Qualification; feedline break; steam generator tube rupture (SGTR); and loss-of-coolant accident (LOCA).

the LOCA analyses do not mechanistically model closure of the MSIV's, but conservatively assume steam line isolation occurs instantaneously at reactor trip.

The other safety analyses listed above assume an overall Engineered Safety Features (ESF) response time for steam line isolation from the time that the isolation setpoint is reached until valve closure. The limiting cases of the accident analyses were revised using an increased MSIV response time. The revised safety analyses demonstrate that a steam line isolation response time of twelve seconds does not invalidate the existing licensing basis for Salem Generating Station. Therefore the proposed increase to a ten second response time does not result in an increase in consequences of an accident previously evaluated.

Technical Specification limits on MSIV closure time assure that the accident mitigating feature of the MSIV's remains within the limits defined by the plant safety analyses. Therefore, increases in closure time do not affect the probability of occurrence of any previously evaluated accidents.

(2) Does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not introduce any new operational configurations to the Salem Generating Station or require any plant modifications. The emergency closure logic associated with the MSIV's is not altered by this change request.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The limits established by the current licensing basis for Salem Generating Station assure that an adequate margin of safety exists. Reevaluation of the applicable safety analyses supports a twelve second steam line isolation ESF response time. The proposed change requests a ten second steam line isolation ESF response time for the ESF signals upon which the safety analyses rely. Therefore the proposed change remains bounded by the limits comprising the licensing basis of Salem Generating Station, and does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's submittals and significant hazards consideration analysis and concurs with the licensee's determination that the proposed amendment does not involve significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 29, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the

following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The

final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700).

The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I-2, Division of Reactor Projects I/II: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania

Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 4, 1990 and supplements dated April 12, 1990 and April 20, 1990, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Dated at Rockville, Maryland, this 20th day of April 1990.

For the Nuclear Regulatory Commission.

James C. Stone,

Acting Director, Project Directorate I-2,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.

[FR Doc. 90-9727 Filed 4-25-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

**Toledo Edison Co., Cleveland Electric
Illuminating Co., Davis-Besse Nuclear
Power Station Unit No. 1; Exemption**

I

The Toledo Edison Company and The

Cleveland Electric Illuminating Company (the licensees), are the holders of Facility Operating License No. NPF-3 (the license) which authorizes operation of the Davis-Besse Nuclear Power Station, Unit No. 1. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in Ottawa County, Ohio.

II

The Toledo Edison Company (the licensee) requested eight exemptions from the Commission's regulations in its letters dated January 12, 1987 and July 31, 1989. Seven of the exemptions are from the requirements in section III.G of appendix R to 10 CFR part 50 which requires that certain measures be taken to protect the systems and components required to achieve and maintain a safe shutdown in the event of a fire. The eighth requested exemption is related to a requirement in section III.J of appendix R regarding emergency lighting in the event of a fire.

The licensee has previously requested a number of exemptions from the technical requirements of appendix R in its letters dated April 29, 1982 and September 30, 1983. The staff approved those exemption requests in two letters dated November 23, 1982 and August 30, 1984. Those exemptions remain in force.

The licensee's additional request for exemptions from certain requirements of appendix R was originally submitted in

its letter dated March 6, 1986. That request was subsequently superseded by the letter dated January 12, 1987 which requested nine specific exemptions. The licensee later withdrew its request for two of these exemptions in its letters dated January 18, 1989 and March 15, 1989. Additionally, the staff found that one of these requested exemptions was not required in that Generic Letter 86-10, "Implementation of Fire Protection Requirements," provided an alternative approach for satisfying the applicable requirements of appendix R. Accordingly, there are six proposed exemptions now pending from the licensee's letter of January 12, 1987.

The licensee later submitted in its letter dated July 31, 1989, a request for three additional exemptions from appendix R including one of the exemption requests previously withdrawn in its letter of January 18, 1989. One of these three exemption requests was later withdrawn in the licensee's letter dated October 26, 1989. There are therefore, a total of eight pending requests for exemptions from the requirements of appendix R remaining from the two letters cited above. The following listing presents the current status of the twelve exemption requests submitted in the licensee's letters dated January 12, 1987 and July 31, 1989. This tabulation also cites the applicable sections of appendix R from which relief is being sought. The last item in this table is a resubmittal of one of the items from the licensee's letter of January 12, 1987.

Item	Date of exemption request	Appendix R section	Status
1. Fire Area R.....	01/12/87	III.G.3	Pending.
2. Fire Area EE.....	01/12/87	III.G.3	Pending.
—Fire Area HH.....	01/12/87	—	Not required.
—Fire Area U.....	01/12/87	—	Withdrawn 03/15/89.
3. Fire Area AB.....	01/12/87	III.G.3	Pending.
4. Fire Area A.....	01/12/87	III.G.2	Pending.
5. Emergency lighting.....	01/12/87	III.J	Pending.
—Embedded conduits.....	01/12/87	—	Withdrawn 01/18/89.
6. Fire Area D.....	01/12/87	III.G.2	Pending.
—Pressurizer level circuits.....	07/31/89	—	Withdrawn 10/26/89.
7. MH 3001.....	07/31/89	III.G.2	Pending.
8. Embedded conduits.....	07/31/89	III.G.2	Pending.

Each of these eight pending exemption requests is discussed below, with the staff's evaluation of the licensee's presentation of the special circumstances for each specific exemption.

Fire Areas R, EE, and AB

For Items 1, 2 and 3 of the table above, the licensee has requested exemptions from the requirements of the last paragraph of section III.G.3 of appendix R which states in part that a fixed fire suppression system shall be installed in

the area under consideration (i.e., Fire Areas R, EE and AB) in that an alternative shutdown capability and its associated circuitry is provided for each of these three areas. Specifically, Fire Area BD provides an alternative shutdown capability for the service

water system in Fire Area R. Additionally, an alternative shutdown capability and its associated circuitry is provided in Fire Area II for the control valves of the turbine driven auxiliary pumps in Fire Area R. Fire Area EE has an alternative shutdown capability in Fire Area II which is physically and electrically independent for potential fire damage to either the circuits or electrical components of the MS106 main steam inlet isolation valve for auxiliary feedwater pump turbine No. 1. Fire Area AB has an alternative shutdown capability in Room No. 115 for potential fire damage to circuits associated with the emergency core cooling system (ECCS) room cooler fans C31-1 and C31-2.

The detailed description of the configuration of the three subject areas, including the construction of the perimeter boundaries, the potential fire hazards and the available fire protection, is contained in the licensee's letter dated January 12, 1987, in its Fire Hazards Assessment Report (FHAR) and in the Davis-Besse Appendix R Compliance Assessment Report (CAR). Part of the licensee's basis for its request for exemptions for these three fire areas is the limited fire hazard in which the equivalent fire severity would range from 4 minutes in Fire Areas R and AB to 8 minutes in Fire Area EE. These relatively low equivalent fire severity times are due to the low in-situ combustible loadings in the subject areas. The licensee also justifies its exemption request for these three fire areas based on the available fire protection.

The staff agrees with the licensee that fires of significant magnitude would not occur in the subject areas nor would they spread beyond the boundaries of these areas. As a result, the cables and/or components which provide the alternative shutdown capability for the equipment in these three fire areas, as discussed above, would not be damaged. The staff's basis is that the principal fire hazards in the subject areas are the insulation on the electrical cables. A fire involving cable insulation is characterized initially by slow burning with a gradual rise in room temperature and significant quantities of smoke. Since the combustion products would be detected by either the existing smoke detection systems or by the plant personnel, the fire brigade would be dispatched and suppress the fire using manual fire fighting equipment. Furthermore, the walls, floors and ceilings of these three fire areas are 3-hour fire barriers which would be effective in confining the effects of a fire

to the area of its origin until the arrival of the fire brigade. Additionally, Fire Area EE has a partial sprinkler system covering at least 30 percent of the area which would tend to minimize a fire in this area. Moreover, as discussed above, there is an alternative shutdown capability for each of these three fire areas which is both physically and electrically independent, thereby permitting a safe shutdown to be achieved even if the subject areas were to sustain fire damage.

On this basis, the staff finds that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that the application of the regulation requiring a fixed fire suppression in Fire Areas R, EE and AB is not necessary to achieve the underlying purpose of the rule (i.e., achieve and maintain a safe shutdown of the plant).

Fire Area A

For Fire Area A (Item 4 of the table above), the licensee has requested an exemption from the requirement of Section III.G.2.a of Appendix R which requires in part that cables and equipment and associated nonsafety circuits or redundant trains be separated by a fire barrier having a 3-hour rating. While there are in general, 3-hour fire barriers in Fire Area A between redundant circuits used to achieve and maintain hot shutdown conditions, there are a number of nonrated fire walls bounding some of the rooms within this subject area. Specifically, the Train 1 safe shutdown circuits in Room Nos. 123 and 124 are not completely separated from the Train 2 circuits in Room No. 115 by a 3-hour fire barrier.

The licensee's basis for its request for an exemption for Fire Area A is that the present level of fire protection is acceptable since smoke and heat from a fire would have to travel between redundant circuits via a complicated path through locations which are partly protected by an automatic sprinkler system in order that a fire in the vicinity of one train could also damage the redundant train. This complicated path derives from the layout of Fire Area A which is a complex of a number of individual rooms encompassing more than one elevation within the plant.

On the basis of its review of the licensee's fire hazards analysis (FHA) and its on-site inspection of the subject fire area, the staff agrees with the licensee that there is presently an acceptable level of fire protection within Fire Area A.

Additionally, the licensee stated in its letter dated May 27, 1987, that if Train 1 systems were to be damaged by a fire in Room Nos. 123 and 124, the plant

procedures would direct the plant operators to use the undamaged Train 2 systems in Room No. 115. Since Train 1 shutdown systems are relied upon in Fire Area A, the staff finds that these procedures transferring reliance to Train 2 provide further assurance that the safe shutdown capability will be maintained in the event of a fire in the subject area. On the basis that the plant operators are fully trained in the transfer procedures cited above, the staff finds that these procedures are acceptable and that there will be no confusion experienced by the operators in making the safe shutdown capability transfer.

During its review of the licensee's FHA, the staff identified a concern regarding a cable chase in the subject fire area which had a significant in-situ fire load but was not protected by an automatic fire suppression system. The licensee addressed this concern in its letter dated May 27, 1987 by stating that the cable trays in this chase were protected by: the trays' solid bottoms; a cover of fire resistant material (i.e., Kaowool); a fire detection system; and manual fire fighting equipment. Additionally, the licensee stated that the high fire loading is attributable to the small floor area of the chase. The staff finds that the licensee's responses in its letter of May 27, 1987 satisfy its specific concerns identified in its review of the Davis-Besse FHA. The staff further concludes that the licensee has demonstrated, as discussed above, that it can achieve and maintain a safe shutdown even if the subject area were to sustain fire damage.

On this basis, the staff finds that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that the application of the regulation requiring that cables and equipment of redundant trains in Fire Area A be separated by a 3-hour fire barrier is not necessary to achieve the underlying purpose of the rule (i.e., achieve and maintain a safe shutdown of the plant).

Emergency Lighting

For Item 5 of the table above, the licensee has requested an exemption from the requirement of Section III.J of Appendix R which requires that emergency lighting units with at least an 8-hour battery power supply be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto. Specifically, the licensee requested approval to use existing "hard-wired" AC/DC essential lighting systems in certain portions of the auxiliary and turbine buildings and to use hand-held portable lighting units in outside plant

areas in lieu of meeting the specific requirement of Section III.J cited above.

The staff initially identified four specific concerns regarding this particular exemption request. In response to the first of these concerns, the licensee stated that the results of its own evaluation confirmed that the AC/DC lighting system in the pertinent portions of the auxiliary and turbine buildings which would be used in establishing an alternative method for achieving a safe shutdown in the event of a fire in either the control room or the cable spreading room, would not be disabled by a fire in either of these latter two locations. On the basis that there is an alternative means for achieving a safe shutdown with the existing AC/DC lighting systems in the event of a fire in either the control room or the cable spreading room, the staff finds that this concern has been resolved.

With respect to the staff's concern regarding the use of hand-held lighting units while conducting manual operations in outside plant areas, the licensee confirmed in Attachment 3 to its letter dated May 27, 1987 that no operator manual actions are required to achieve safe shutdown which would involve the use of both hands. On this basis, the staff finds this concern resolved. With respect to the third of the staff's concerns, the licensee also confirmed in its letter dated May 27, 1987 that the travel route of the operators is free from potentially hazardous conditions for those outside plant areas where operator action is required to achieve safe shutdown. On this basis, the staff finds this particular concern resolved.

The staff also expressed its concern that the illumination level in certain areas might not be sufficient to permit the plant operators to perform actions required to achieve a safe shutdown. In response, the licensee stated in its letter dated January 12, 1987, that a plant walkdown was performed to verify that there was adequate illumination within these areas for all activities which must be performed in the first 8 hours following the onset of a fire. This is also true for the access routes to these areas of concern. Following this plant walkdown, the licensee installed additional emergency lighting units and repositioned others. These modifications were performed consistent with the guidance provided in Generic Letter 86-10, "Implementation of Fire Protection Requirements." On this basis, the staff finds that this last concern regarding emergency lighting is resolved.

The staff agrees with the licensee that there is an acceptable method for providing emergency lighting in those

portions of the auxiliary and turbine buildings that the plant operators must enter to achieve a safe shutdown in the event of a fire in either the control room or the cable spreading room. The staff also agrees with the licensee that there is an acceptable method for providing emergency lighting in outside plant areas. Finally, the staff also agrees that the modifications to the emergency lighting units cited above made in accordance with Generic Letter 86-10 are acceptable.

On the basis that the licensee has provided acceptable emergency lighting units for all areas, including the access routes, that plant operators must enter in the event of a fire, the staff finds that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that it meets the underlying purpose of the rule regarding emergency lighting.

Fire Area D

For Fire Area D (Item 6 of the table above), the licensee has requested an exemption from the requirement of Section III.G.2.d of Appendix R which requires, for non-inerted containments, that cables and equipment and associated nonsafety circuits of redundant trains be separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. Specifically, the licensee's request is with respect to three redundant containment air cooler fans (i.e., C1-1, C1-2, and C1-3) which are about 10 feet apart. The physical configuration of this fire area, its fire hazards, and available fire protection, are provided in the licensee's letter requesting this exemption.

The staff agrees with the licensee that it has met the underlying purpose of the rule as discussed below. The licensee originally committed to protect the three circuits associated with these fans by radiant energy shields in its letter dated January 12, 1987. However, in its letter dated February 16, 1990, the licensee revised this commitment to protect only one of these circuits with a radiant energy shield in the containment and annulus and with a 1-hour barrier and fire suppression and detection systems or with a 3-hour fire barrier in the auxiliary building. This proposal to protect only one train of a system is in compliance with the requirements of Appendix R to 10 CFR Part 50 and is acceptable. With respect to the fan coolers themselves, the small fire loading in this area would result in a relatively minor equivalent fire severity of about 4 minutes in the fire zone where the fan coolers are located (i.e., Fire Zone D-15). Further, the configuration of this area would tend to dissipate smoke

and hot gases away from the subject fan coolers in the event of a fire. Additionally, the metal cabinets enclosing the fans would shield the fans themselves from the radiant energy of a fire.

On this basis, we find that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that the application of the regulation requiring that the subject equipment be separated by more than 20 feet is not necessary to achieve the underlying purpose of the rule (i.e., achieve and maintain a safe shutdown of the plant).

Manhole MH 3001

For manhole MH 3001 (Item 7 of the table above), the licensee has requested an exemption from the requirement of Section III.G.2.b that requires in part that cables and equipment and associated nonsafety circuits located in the same fire area outside of primary containment and necessary to achieve and maintain hot shutdown conditions be separated by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. Specifically, the licensee's request is with respect to redundant circuits in the subject manhole associated with the service water system, including pumps (P3-1, P3-2 and P3-3), the backup pump (P-180), valves (SW 1395 and SW 1399) and motor control centers (MCCs E12C and F12C), which are less than 6 feet from one another. This manhole has neither active nor passive fire protection features.

The staff agrees with the licensee that there is a negligible potential for a fire which could damage redundant cables in this manhole in that there are no credible external sources of fire since the manhole is constructed with a concrete raised sill whose top opening is covered with a steel cap bolted into place. As a result, the only significant fire threat to the redundant cables is from a cable-induced fire within the manhole itself. With respect to this fire potential, the licensee stated in its exemption request that the insulation on the cables in this manhole satisfies the criteria of IEEE Standard 383-1974 or its equivalent. Accordingly, this material will not sustain combustion unless an external heat source is present. Since the redundant cables are separated in accordance with the guidance in Regulatory Guide 1.75 and the cables are protected against protracted fault conditions by overcurrent devices, the staff concludes that there is a negligible potential for a fire which could damage the redundant circuits.

On this basis, the staff finds that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that the subject redundant cables in manhole MH 3001 need not be physically separated by more than 20 feet to achieve the underlying purpose of the rule (i.e., achieve and maintain a safe shutdown) in that there is negligible potential for a fire in the subject fire area.

Embedded Conduits

For certain cables of electrical circuits which are enclosed in conduit and embedded in concrete walls, floors and ceilings (Item 8 of the table above), the licensee has requested an exemption from the requirement of Section III.G.2.a of Appendix R which requires in part that cables and equipment and associated nonsafety circuits of redundant circuits required to achieve a safe shutdown be separated by a fire barrier having a 3-hour rating. The subject cables were not evaluated by the licensee in its safe shutdown analysis for a fire. However, the depth and configuration of the concrete covering these cables is insufficient in the event of a fire to meet the Appendix R requirement cited above. The licensee later submitted supplemental information regarding the subject exemption request in its letter dated September 30, 1989.

The licensee stated in the cited documents that it conducted a comprehensive effort to determine where potentially vulnerable cables were installed and to determine the depth and configuration of the concrete cover, the steel reinforcing bars and anchor bolts, all of which have an effect on the fire resistance of the reinforced concrete cover. The licensee determined in its analysis, using the standard heat input specified in ASME E-119, that if a fire were to occur in any of the subject areas, the temperature of the electrical cables would not exceed 310° F in a 30-minute period. When active fire suppression activities begin after the arrival of the fire brigade, thereby removing the heat source, the licensee stated that the cable temperatures would continue to rise to a maximum of 370° F and then diminish. The temperature-time profiles cited above were used as a reference to assess the adequacy of fire protection for the embedded cables in the subject fire areas.

The staff agrees with the licensee that 370° F is an acceptable temperature limit below which significant fire damage to the electrical cables would not occur. Furthermore, the staff finds that this acceptance criteria is conservative in that the nature and configuration of the

combustibles in the subject fire areas will produce a temperature-time profile which is lower than that derived when using ASTM E-119.

The licensee's analysis of the subject fire areas was divided into three categories when comparing the fire hazards with the existing fire protection in each portion of the subject fire areas. The first of these categories was those areas which had combustibles that would result in an equivalent fire loading less than 30 minutes. The staff finds the areas in this first category acceptable on the basis that an all consuming fire less than 30 minutes would not produce sufficient heat to damage the cables; i.e., the maximum possible cable temperature of 310° F would be below the acceptance criterion of 370° F.

In the second category, there are a number of fire areas having combustibles which would yield an equivalent fire loading greater than 30 minutes but which are also protected by automatic fire suppression systems. The staff finds the areas in this second category have an acceptable level of protection on the basis that the fire suppression systems in these areas would actuate automatically during the early stages of a fire.

There are two locations (i.e., Rooms 428 and 515) which have combustibles that would produce an equivalent fire loading greater than 30 minutes but which do not have automatic fire suppression systems. Based on our evaluation of the licensee's justification for not providing automatic suppression systems for these two rooms and on our inspection of these areas during August 1989, the staff agrees with the licensee that any potential fire in these two rooms would be suppressed by the plant fire brigade well before room temperatures reached a level high enough to cause cable damage.

Based on the validity and conservatism in the licensee's heat transfer analyses of the protective cover over the embedded conduits in the subject areas and on the subsequent evaluation as discussed above, the staff concludes that the licensee has provided an acceptable level of fire protection for the subject fire areas. On this basis, the staff finds that the licensee has demonstrated, as required by 10 CFR 50.12(a)(2)(ii), that the subject redundant embedded cables need not have a 3-hour fire barrier to achieve the underlying purpose of the rule (i.e., achieve and maintain a safe shutdown) in that the reinforced concrete cover and other protective measures will limit the

temperature rise in the embedded cables below the threshold of damage.

III

In summary, the NRC staff finds that the licensee has demonstrated, for each of the eight exemption requests, that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that, for each of these exemption requests, the fire protection provided by the licensee will not present an undue risk to the public health and safety.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the eight exemptions as described in Section II are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest and hereby grants the eight exemptions with respect to the requirements of 10 CFR part 50, appendix R, sections III.G and III.J.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the Federal Register (55 FR 10727, March 22, 1990). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of these exemptions will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of April 1990.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90-9728 Filed 4-25-90; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Pursuant to the Nuclear Waste Technical Review Board's (NWTRB) authority under section 5051 of Pub. L. 100-203 of the Nuclear Waste Policy Amendments Act of 1987, the NWTRB staff and consultants will meet with Nuclear Regulatory Commission (NRC) staff May 18, 1990, from 8 a.m. to 12 p.m. at the Hyatt Arlington in Virginia, Ravensworth Hall, Hyatt Arlington (Key Bridge at Rosslyn), 1325 Wilson Blvd., Arlington, Virginia 22209; (703) 525-1234. Topic of discussion will be the NRC's role, or potential role, in several key

issues relating to the safe handling and transportation of spent nuclear fuel.

1. System safety technology, to assure the safe handling and transportation of spent fuel from point of origin to point of disposal.

2. Human factors technology, to apply what is known about human psychological, physiological, and physical limitations to the design and operation of systems to make them as safe as possible.

3. A program to minimize the handling of spent fuel. Such a program would explore the use of new technologies, such as dual-purpose or universal casks or the placement of loaded fuel canisters or containers into shipping casks.

The public is welcome to attend. Due to limited space, however, those wishing to attend should contact Helen Eimersen (202-254-4792) on or before May 12, 1990.

For further information contact Paula N. Alford, Director, External Affairs, 1111 18th Street NW, suite 801, Washington, DC 20036 (202-254-4792).

Dated: April 20, 1990.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 90-9644 Filed 4-25-90; 8:45 am]

BILLING CODE 6820-AM-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Information Collection Activities Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within May 10, 1990. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer:

Valerie J. Settles, Office of Personnel and Administration, Overseas Private Investment Corporation, suite 461, 1615 "M" Street, NW., Washington, DC 20527; Telephone (202) 457-7152

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395-7340.

Summary of Form Under Review

Type of request: Revision.

Title: Request for Registration for Political Risk Investment Insurance.

Form number: OPIC-50.

Frequency of use: Other—once per investor per project.

Type of respondent: Business or other institutions (except farms).

Standard industrial classification codes: All.

Description of affected public: U.S. companies investing overseas.

Number of responses: 500 per annum.

Reporting hours: 250.

Federal cost: \$5,000.

Authority for information collection: Section 234(a) of the Foreign Assistance Act of 1961, as amended.

Abstract (needs and uses): OPIC 50 is submitted by eligible investors to register their international investments, and ultimately, to seek OPIC insurance. By submitting Form 50 to OPIC prior to making an irrevocable commitment, the incentive effect of OPIC is demonstrated.

Dated: April 18, 1990.

James R. Offutt,

Office of the General Counsel.

[FR Doc. 90-9680 Filed 4-25-90; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27916; File No. SR-Amex-90-4]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to Index Warrants Based on the Major Market Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 30, 1990, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III

below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under § 106 of the Amex Company Guide warrants based on the Amex Major Market Index, and to add new Commentary .03 to rule 411 to provide that such warrants shall be sold only to options-approved accounts.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose.

Section 106 of the Amex Company Guide sets forth guidelines applicable to listing index warrants based on established foreign and domestic stock indexes. Pursuant to § 106, the Amex is proposing to list index warrants based on the Amex Major Market Index ("MMI").¹ The MMI is a broad-based, price-weighted index of twenty stocks.²

¹ Options on the MMI have been traded on the Amex since 1983. See Securities Exchange Act Release No. 19710 (April 27, 1983), 48 FR 20180, relating to the procedures and rules regarding the MMI and options trading thereon.

² The following stocks currently are included in the MMI: AT&T, American Express, Chevron, Coca-Cola, Dow Chemical, Dupont, Eastman Kodak, Exxon, General Electric, General Motors, IBM, International Paper, Johnson & Johnson, Merck & Co., Minnesota Mining & Mfg. Mobil, Philip Morris, Procter & Gamble, Sears Roebuck, and USX Corporation.

The MMI warrant issues will conform to the listing guidelines under § 106, which provide that (1) The issuer shall have assets in excess of \$100,000,000 and otherwise substantially exceed the size and earnings requirements in § 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000.

The MMI warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the MMI has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the MMI has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in the MMI warrants will be subject to several safeguards designed to ensure investor protection. The Amex has adopted Rule 411, Commentary .02 which sets forth suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in Rule 923 to recommendations regarding index warrants and recommends that index warrants be sold only to options-approved accounts.

The Exchange proposes to add new Commentary .03 to Rule 411 to provide that, notwithstanding the provisions of Commentary .02, the MMI warrants shall be sold only to investors whose accounts have been approved for options trading pursuant to Rule 921. The Exchange is requiring MMI warrants to be sold to only options approved accounts because options on the MMI are currently trading on the Amex, and the Exchange believes it is appropriate to apply comparable options account approval requirements to each.

In addition, rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on

the day entered. Finally, prior to the commencement of trading, the Amex will distribute a circular to its membership calling attention to specific risks associated with MMI warrants.

(2) Basis.

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions

of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 18, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9707 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27922; File No. SR-MBSCC-90-1]

Self-Regulatory Organizations; MBS Clearing Corporation; Proposed Rule Change Relating to Collection of Commissions on Behalf of Participants Acting as Brokers

April 20, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1990, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below,¹ which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As summarized in section II. A below, MBSCC'S proposed rule change will establish a collection service and a fee for the collection of commissions on behalf of participants acting as brokers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

¹ The proposal was originally filed pursuant to section 19(b)(3)(A) of the Act. On March 21, 1990, MBSCC amended the proposal to provide for review pursuant to section 19(b)(2) of the Act. See letter, dated March 21, 1990, from Jeffrey Lewis, Secretary, MBSCC, to Sonia Burnett, Staff Attorney, Division of Market Regulation, Commission.

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to authorize MBSCC to collect and establish a service fee for MBSCC's collection of commissions on behalf of MBSCC participants acting as brokers. Under the proposal, MBSCC will charge brokers a service fee equal to .035% of all collected commissions.

(b) Currently, many broker participants collect commissions from dealer participants outside of MBSCC's facilities. Under the proposal, MBSCC will collect broker commissions from dealers for the service fee noted above. However, participation in the program is voluntary and any dealer or broker may decline at any time to have MBSCC act as its agent for the collection of commissions. Any participant need only provide MBSCC with telephone notice of their desire to terminate participation in the service.² MBSCC also will rely on brokers submitting commission information for the accuracy of commission charges imposed.

The proposed rule change is consistent with section 17A of the Act in that it provides for the equitable allocation of fees for a service provided for participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed collection service is voluntary. All participants were notified on November 30, 1989, of the proposed service, and to advise MBSCC if they do not want commissions collected through MBSCC.³ MBSCC has accepted requests of several dealer participants who do not want MBSCC to act as their agent to collect commissions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBSCC. All submissions should refer to file number SR-MBSCC-90-01 and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9713 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27924; File No. SR-NASD-90-25]

Self-Regulatory Organizations; Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Subscriber Deposits for Level 2/3 and NASDAQ Workstation Equipment

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

that on April 17, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of the filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending Schedule D of the By-Laws to include a subscriber deposit requirement for new and selected existing subscribers of Level 2/3 or NASDAQ Workstation™ equipment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the past two years, NASDAQ Inc. has experienced a significant increase in accounts receivable balances that are not collected. These balances are generally caused by firms ordering the installation of Level 2/3 or NASDAQ Workstation™ equipment, not paying service charges, and ultimately leaving the securities business without settling the accounts due to NASDAQ Inc. In addition, in almost every instance where a subscriber's service is cancelled, there are unpaid balances remaining.

A review of accounts written off by NASDAQ Inc. indicates that the problem is escalating and a large proportion of delinquent balances originate with firms that cancel service prior to the end of the contract period (usually two years). In 1988, the corporation wrote off over \$74,000 and

² Id.

³ Id.

in 1989, that amount more than doubled. As of January, 1990, outstanding delinquent accounts exceeded \$47,000. To hedge against rising delinquencies, NASDAQ Inc. is proposing subscriber deposits for new and existing accounts that have experienced delinquent payment practices in the past. The subscriber deposits in part represent the actual expenses incurred by NASDAQ Inc. as obligations to telephone companies and the Harris Corporation.

NASDAQ Inc. will require a deposit by new subscribers, including franchised affiliates, that will include:

- a. Estimated installation charges including cable, freight and telephone company charges;
- b. Two (2) months service and equipment charges; and
- c. Estimated disconnect charges including Harris disconnect and freight charges.

Existing subscribers that have been placed on the termination list two or more times within a two year period, those that have paid for services with one or more NSF checks, and those that have had service disconnected for non-payment but have not had equipment removed will be required to deposit:

- a. Two (2) months service and equipment charges; and
- b. Estimated disconnect charges including Harris disconnect and freight charges.

The deposit would be returned to the subscriber upon cancellation of service and full payment of outstanding balances.¹

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange Act of 1934. Section 15A(b)(5) requires that the rules of the Association "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls." The NASD believes that the rule change is consistent with this provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

¹ Other vendors of financial information also require security deposits for installation of devices for many customers. For example, Quotron and ADP collect security deposits and refund them after service has been terminated and all charges have been assessed and paid.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4 in that it establishes a charge imposed by the NASD solely upon its members. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 20, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9714 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27926; File No. SR-NSCC-90-05]

Self-Regulatory Organizations; Proposed Rule Change by National Securities Clearing Corporation Regarding a Modification to its Dividend Settlement Service

April 20, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 8, 1990 the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The proposal was originally filed for immediate effectiveness pursuant to section 19(b)(3)(A) of the Act.² On April 12, 1990, NSCC amended the proposed rule change, staying its effectiveness and requesting accelerated consideration and approval of the proposal pursuant to the procedure established by section 19(b)(2) of the Act.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow NSCC to expand its Dividend Settlement Service ("DDS") to include the processing of claims for dividends and/or interest for such financial instruments as determined by NSCC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

¹ 15 USC 78s(b)(1) (1989).

² 15 USC 78s(b)(3)(A).

³ 15 USC 78s(b)(2). Letter from Alison N. Hoffman, Associate Counsel, NSCC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission (April 9, 1990).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to expand the DSS to include the processing of claims for dividends and/or interest for such financial instruments as NSCC will determine from time to time. Currently the DSS rules specifically provide only for the processing of claims for dividends and registered bond interest. Other claims may be submitted if consented to by both parties. NSCC has been requested by the Dividend Division of the Securities Industry Association ("SIA") to expand the service to cover dividend and/or interest claims for such items as Government and Agency Bonds, Unit Investment Trusts and Master Limited Partnerships. The rule change will accommodate the diversity of instruments which may be subject to dividend and/or interest claims. On an ongoing basis, NSCC will separately publish a list of instruments which may be included within the service. This change will enable the service to be even more effective and responsive to member's needs.

(b) NSCC believes that the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible and that, as a result, it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC and in particular with section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 USC 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number SR-NSCC-09-05 and should be submitted by May 17, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9715 Filed 4-25-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-27921; File No. SR-NASD-90-27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASDAQ/National Market System Issuer Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on April 17, 1990 the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which

renders the fee effective upon the Commission's receipt of the filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides an exception for foreign issuers from the recently adopted NASDAQ/National Market System annual participation fee of \$2,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The SEC recently approved Rule Filing SR-NASD-89-57 which amended Schedule D to the NASD By-Laws to require that the issuer of each security designated for inclusion in the NASDAQ/National Market System pay an annual participation fee of \$2,000, in addition to the annual fee specified at section B.1. of part IV of Schedule D to the NASD By-Laws.¹ The \$2,000 fee is being used to support the continued expansion and technological enhancement of NASD's market surveillance systems and programs, which include the NASD's new on-line market surveillance system, StockWatch, as well as the doubling of Market Surveillance staff during the five-year period FY1986-90. The new fee is being used to support additional services to NASDAQ/National Market System issuers, increased marketing efforts to heighten investor interest in the NASDAQ Market, and efforts to obtain state registration exemptions for NASDAQ/National Market System securities.

Unfortunately, the NASD omitted to include a one-year exception in the new

¹ Securities Exchange Act Rel. No. 27640 (January 22, 1990); 55 FR 3129 (January 30, 1990).

provision reflecting the historical position of the NASD to distinguish the annual NASDAQ fee for domestic issuers from the fee for foreign issuers of securities and their American Depository Receipt ("ADR") equivalents. Foreign issuers have historically been less demanding of NASDAQ services than domestic issuers. The current structure of the annual fee provisions in section B.1 of part IV to Schedule D to the By-Laws reflects this historical position of the NASD by providing in subprovision g. thereof that securities of foreign issuers and ADRs are subject to an annual fee of \$500, whereas securities of domestic issuers are generally subject to a higher fee pursuant to subprovisions a.-f.

Many of the enhanced programs to be funded by the \$2,000 fee including personalized programs involving visitations to companies and analytical trading services as well as media advertising efforts directed toward enhancing the image of the NASDAQ/NMS market, will not be directed toward foreign issuers in 1990. However, it is expected that these efforts will be extended to these companies beginning in 1991 after the launch of the NASDAQ International extended hours service scheduled for the Fall of 1990.

The NASD is, therefore, proposing to amend new section B.3. to provide an exception to the \$2,000 NASDAQ/NMS fee for 1990 only for issues of foreign issuers "whose annual fee is calculated pursuant to section B.1.g." to be effective until December 31, 1990. At that time, the amendment will be deleted from the provision.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934, which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that this rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects fees imposed by the Association. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 20, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9718 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27923; File No. SR-OCC-90-03]

Self-Regulatory Organizations; Options Clearing Corporation; Proposed Rule Change Relating to Acceptance of Late Exercise Notices

April 20, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 15, 1990, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to amend its Rule 801(e) to: (1) Reduce the potential for clearing member errors in the processing of late exercise notices by modifying the fee schedule to differentiate between corrections received prior to the start of critical processing and those received afterwards; (2) clarify OCC's intent to exclude foreign currency options from the late exercise provisions; (3) establish a cut-off time when late filing requests to revoke previously tendered exercises will no longer be accepted for processing; and (4) expand the authority to invoke this rule to an authorized delegatee of the Chairman and/or President.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change revises the filing fee schedule in rule 801(e) to more accurately reflect the cost incurred by OCC as a result of processing requests for the filing, revocation or modification of late exercise notices (sometimes hereinafter referred to as "late exercises").¹ The proposed rule change

¹ OCC's experience since the inception of rule 801 in May, 1987 has shown that this revised fee schedule is consistent with the efforts needed to provide the service. In that time period, OCC has processed twenty-one requests for late exercises of which seven were received after the completion of critical processing. These errors, had they not been corrected, represented a potential loss to clearing members of almost two million dollars.

reflects the fact that late exercise filings submitted during pre-critical processing will have a minimal effect on OCC's processing environment because they can be accommodated via standard corrections. Late exercises processed in this manner are not costly to either OCC or the clearing member, therefore clearing members will be assessed minimal filing fees to reflect the effort needed to process these late exercises.

Late exercise filings submitted after pre-critical processing (which ends at 10 p.m.),² but prior to the start of critical processing, can be processed through a restore and recovery effort. Due to the greater amount of effort involved, these exercises will be assessed a higher filing fee of \$2,000.00 per clearing member.

Finally, late exercise filings submitted after the start of critical processing will be assessed the highest filing fee. Processing these late exercises can only be accomplished through the use of costly supplemental assignment procedures which are manually intensive and involve special handling by both OCC and the assigned clearing member. Since this process is not automated, settlement must be effected in a broker-to-broker mode which increases the costs to the assigned member. Therefore, in an effort to compensate the assigned members and to eliminate any perceived inequities, the proposed rule change provides that 50% of the filing fee for late exercises received after the start of critical processing be shared with the assigned clearing members on a pro-rata basis. The proposed rule change amends rule 801(e)(2) to impose an obligation on OCC to inform the clearing member of the applicable filing fee at the time the late exercise notice is submitted for processing.

The proposed revised filing fee schedule is intended to create greater incentive for members to complete exercise verification procedures prior to the start of critical processing and in the process compensate OCC for the cost of developing, maintaining and operating special systems to accommodate late filings.

(1) Late Exercise Notices Received After 6 a.m.

Rule 801(e) presently does not set an actual cut-off time for the acceptance of a late exercise notice. The practice has been to accept a notice if OCC could notify the assigned firm prior to the market opening. Clearing members, however, have indicated that they need a minimum of thirty minutes to

"process" a late assignment and have requested a cut-off time of 8 a.m. for notification in order to minimize their risk. Accordingly, the proposed rule change amends rule 801(e)(2) to state that OCC will under normal circumstances process a late exercise notice if it is accepted prior to 6 a.m. This will allow sufficient time for processing and notifying the assigned firms prior to the 8 a.m. deadline. The Rule will further allow OCC to attempt to process late exercise notices received after 6 a.m., on a best efforts basis, but only to the extent that the assigned firms can be notified prior to 8 a.m. By imposing these time frames, late exercise notices can be handled in an appropriate manner to accommodate both the exercising and assigned clearing members. Further, the assigned clearing member will not be unduly burdened by receiving an assignment notice at the market opening.

(2) Revocation of Exercise Notices

Rule 801(e) also provides for the revocation of exercises tendered in error. In order to assist firms in identifying this problem, OCC has developed automated edits to flag out-of-the-money exercises prior to the start of critical processing. When an out-of-the-money exercise is identified, OCC contacts the clearing member involved to confirm its intentions.

After critical processing has begun, the acceptance of a late request to revoke a previously tendered exercise notice would require a restore and recovery effort in a riskier environment (*i.e.*, the process is more complex and thus could delay delivery of clearing reports to the entire membership). Additionally, clearing member assignments received from OCC's data service facility will automatically update cluster accounts, billing, customer trade confirms and stock clearing corporation CNS accounts. Consequently, the process required to reverse assignments resulting from the revocation of an exercise received after the start of critical processing is manually intensive and subject to error in coordinating across a clearing member's internal sub-systems. Thus, the proposed rule change to Rule 801(e)(2) provides that late filing requests to revoke previously tendered exercises should not be accepted after the start of critical processing.

(3) Delegation of Authority

The proposed rule change also concerns the delegation of the Corporation's authority to approve late

exercise requests.³ Rule 801(e) presently states that only the Chairman, President or, in their absence, any Executive Vice President, may approve late exercise requests. In order to conform with other Rules and to accommodate a situation where neither the Chairman, President or an Executive Vice President is available, the proposed rule change allows the Chairman and/or President to delegate their authority to approve late exercise requests.

(4) Foreign Currency Options

The proposal also would exclude foreign currency options from the late exercise provisions. Foreign currency options normally trade between the hours of 7 p.m. and 2:30 p.m. the next day. (OCC processes these trades between the hours of 4 p.m. and 6 p.m.) Due to the necessity of disseminating reports and assignment information prior to the start of trading each evening, it would be impossible to accept a foreign currency exercise instruction after the present deadline of 2:30 p.m. The proposed rule change adds an interpretation and policy to rule 801(e) to clearly reflect the exclusion of foreign currency options from the late exercise provisions. Accordingly, the reference to options cleared through International Clearing System ("ICS") in section 801(e)(2) has been deleted to avoid redundancy.

Finally, the proposed rule change conforms rule 802 and rule 803, which refer to the acceptance and assignment of exercise notices submitted by clearing members, to the changes set forth above.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act, as amended, because it promotes the protection of public investors and the public interest by reducing the potential for clearing member errors in processing late exercise notices and by providing incentive for clearing members to identify exercise errors early in OCC's processing cycle.

³ OCC rules currently provide that later exercise notice filings may be deemed violations of OCC procedures justifying disciplinary action. Such disciplinary proceedings may be necessary in the event a clearing member abuses OCC's later filing procedures by, for example, repeated late filings or by using late filings to take advantage of late-breaking news that could adversely affect the market. Late exercise notice filings will only be accepted, at the discretion of the OCC, for bona fide processing errors.

² All times referenced in this notice are Central Time unless otherwise stated.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants and Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- a. By order approve such proposed rule change or,
- b. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR-OCC-90-03 and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9716 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27919; SR-PSE-90-11]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc., Proposed Rule Change Relating to Listing Guidelines for Trading of Index Warrants and Rules Applicable to Index Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1990, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In order to allow the PSE to list and trade warrants based upon foreign and domestic market indexes, the PSE proposes to: (i) Amend PSE rule I, section 3(b), to provide listing guidelines applicable to index warrants; (ii) amend PSE rule X, section 18(c), to apply options suitability standards to recommendations regarding index warrants; and (iii) amend PSE rule X, section 18(e)(1), to require that discretionary orders in index warrants be approved and initialed on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). These proposed changes are based upon, and similar to, rule changes previously adopted by the American Stock Exchange ("AMEX") and approved by the Commission.¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to amend PSE rule I, section 3(b), entitled "Warrants," for the purpose of providing listing guidelines for index warrants. The proposed warrants will be cash-settled, unsecured obligations of the issuer with a term ranging from one to five years. Only index warrants based on established domestic and foreign market indexes would be accepted for listing. The Exchange plans to list both American-style warrants (*i.e.*, exercisable throughout their life) and European-style warrants (*i.e.*, exercisable only upon their expiration date). Upon exercise, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the underlying index has declined below a pre-stated cash settlement value, while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. Warrants that are "out-of-the-money" at the end of the stated term will expire worthless.

The PSE will consider listing index warrants on a case-by-case basis. Because the warrants would represent unsecured obligations of the issuer, only warrants issued by companies that exceed the Exchange's financial listing criteria and that have assets in excess of \$100 million would be eligible for listing. The Exchange proposes to require a minimum public distribution of one million warrants together with a minimum of 400 public holders, and an aggregate market value of \$4 million. In addition, warrants which have been approved for trading on another national securities exchange would be eligible for listing.

The Exchange proposes to amend PSE rule X, section 18(c) entitled "suitability," to apply the options suitability standard to index warrant recommendations made by members and member organizations. The suitability standard would require that the member or member organization have reasonable grounds to believe that the recommended index warrant transaction is suitable for the customer and that the customer is able to evaluate and bear the risk of the proposed transaction. The Exchange will

¹ See Securities Exchange Act Release No. 26152 (October 3, 1988), 54 FR 39832.

recommend that index warrants be sold only to options-approved accounts.

The Exchange also proposes to amend PSE rule X, section 18(e)(1), entitled "Discretionary Accounts," so that a SROP or ROP will be required to approve and initial any discretionary index warrant transaction on the day it is executed. The SROP shall review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transactions, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.

The Exchange believes the proposed rule changes are consistent with section 6(b) of the Act in general and with section 6(b)(5) in particular, in that they will act to facilitate transactions in securities and represent innovative financing techniques designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in return for assuming some foreign currency or overall market volatility risk. Purchasers of the warrants will be able to use them to hedge against or speculate on foreign currency and stock market fluctuations.

(B) Self-Regulatory Organization's Statement on the Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve such proposed rule changes, or (b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 19, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9717 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27915; SR-PSE-90-12]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Listing of Index Warrants Based on the Nikkei Stock Average

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 27, 1990, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its rules in order to allow the Exchange to list and trade index warrants based on the Nikkei Stock Average ("Nikkei").¹

¹ The Commission, however, will not act on this filing until it has decided whether to approve a

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In October 1988 the Commission approved amendments to the American Stock Exchange ("AMEX") rules to permit the AMEX to list warrants based on established foreign and domestic market indexes.² In its approval order the Commission expressed concern about the impact of additional index products on U.S. financial markets, and, accordingly, required the AMEX to submit for Commission approval any specific index warrants that it proposed to trade. On December 22, 1989, the Commission approved the AMEX's proposal to list index warrants based on the Nikkei,³ an internationally recognized, price-weighted index consisting of 225 representative, actively-traded stocks on the Tokyo Stock Exchange ("TSE"). The Nikkei is calculated and managed by Nihon Keisai Shimbun, Inc., of Japan.

The PSE proposes to amend its rules to allow the Exchange to list warrants based on the Nikkei. The warrant issues will conform to PSE listing guidelines that provide that (1) The issuer shall have assets in excess of \$100,000,000 and otherwise substantially exceed the size and earnings requirements specified in PSE listing requirements; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and shall have an aggregate market value of \$4,000,000.

Nikkei index warrants will be direct obligations of their issuer subject to cash settlement during their term, and shall be exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Nikkei has declined below a

related PSE filing (SR-PSE-90-11) proposing generic listing standards for warrants based on domestic and international market indexes and certain sales practice rules for the trading of these warrants.

² Securities Exchange Act Release No. 28152 (October 3, 1988), 53 FR 39832.

³ Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376.

pre-stated cash-settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Nikkei increased above the pre-stated cash-settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Trading in Nikkei warrants would be subject to several safeguards designed to ensure investor protection. In filing SR-PSE-90-11,⁴ the PSE proposed amendments to PSE rule X, § 18, which would: (i) Make the Exchange's options suitability standards applicable to recommendations regarding index warrants and (ii) require that a Senior Registered Options Principal or a Registered Options Principals approve and initial a discretionary order in index warrants on the day the order is entered. The Exchange also recommends that index warrants be sold only to options-approved accounts. Prior to the commencement of trading, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Nikkei warrants.

In addition, the PSE is ensuring that there will be an adequate mechanism for the sharing of surveillance information with respect to the index's component stocks (i.e., the sharing of surveillance information between the PSE and the exchange on which the index's component stocks are traded). This will comply with the requirements set forth in the approval order authorizing the listing of Nikkei warrants on the AMEX.

The Exchange believes that the proposed rule change is consistent with the requirements of the Act, and, in particular, with section 6(b)(5), as the warrants are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on the Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

⁴ See *supra* note 1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (a) By order approve such proposed rule change, or (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerns the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 18, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9708 Filed 4-25-90; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-17450; 812-7384]

Electricity Corporation of New Zealand Finance Limited; Application

April 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Electricity Corporation of New Zealand Finance Limited ("Finance") and Electricity Corporation of New Zealand Limited ("ECNZ").

RELEVANT 1940 ACT SESSIONS: Exemption requested for Finance under section 6(c) from all provisions of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting Finance from all provisions of the 1940 Act in connection with the offering and sale of certain debt securities and non-voting preferred shares by Finance in the United States.

FILING DATES: The application was filed on September 5, 1989, and an amendment to the application was filed on March 23, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 17, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Frederic C. Rich, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282, (in Maryland (301) 258-4300).

Applicant's Representations

1. Finance, incorporated under the laws of the Cayman Islands, is a direct wholly owned subsidiary of ECNZ. Its purpose is to raise funds for ECNZ and companies controlled by ECNZ (the "ECNZ Group").

2. ECNZ is a New Zealand corporation whose capital stock is

wholly owned by the government of New Zealand. It engages in the business of generating, transmitting and marketing bulk high voltage electricity. In the year ended March 31, 1989, ECNZ produced approximately 95% of all electrical energy sold for supply in New Zealand and had total assets of approximately NZ \$7.3 billion, making ECNZ the second largest company, by value of assets, in New Zealand outside the financial sector. Although ECNZ is government-owned, it is incorporated under the Companies Act 1955 of New Zealand, it is run as a commercial enterprise, and its obligations are not guaranteed by New Zealand. Accordingly, ECNZ is a foreign private issuer within the meaning of Rule 3a-5 under the 1940 Act.

3. Finance proposes to offer and sell debt securities, including its short-term commercial paper and exchangeable and convertible securities, of varying maturities in the United States and international capital markets. Finance may also offer and sell its non-voting preferred shares. All such securities will be unconditionally guaranteed by ECNZ, as described in condition 3 below. The guarantee by ECNZ will provide that, in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities or non-voting preferred shares issued by Finance, the holders of those securities may institute legal proceedings directly against ECNZ to enforce the guarantee without first proceeding against Finance. ECNZ will appoint an agent in the United States to accept service of process in any suit, action, or proceeding brought with respect to such securities instituted in any state or federal court in the City of New York and will expressly submit to the jurisdiction of any such court with respect to any such suit, action, or proceeding.

4. Funds raised by Finance outside of New Zealand are channelled through a loan/deposit facility (the "Loan/Deposit Facility") with non-New Zealand banks. As of the date of the application, the Loan/Deposit Facility involved the Singapore branches of three Japanese banks, and the Applicants were negotiating a virtually identical arrangement with a Danish bank. Other banks may be added to the Loan/Deposit Facility.

5. The basic operation of the Loan/Deposit Facility is as follows. ECNZ has entered into separate loan agreements with each of the participating Japanese banks. The amounts borrowed by ECNZ from the participating banks were

immediately on-lent to Finance pursuant to an on-lending agreement. Finance has also entered into deposit agreements with the Singapore branches of the participating banks. Pursuant to each deposit agreement Finance agreed to deposit with such branch the full amount of the loan made to ECNZ on the date on which such loan was made to ECNZ. The amount of interest paid to Finance on such deposits is identical to the amount paid by ECNZ under the loan agreements to the participating banks except that (a) no reduction corresponding to the amount of New Zealand withholding tax deducted by ECNZ is made by the banks and (b) a specified amount is deducted from such interest payments as a tax absorption fee. Interest payments on such deposits are not subject to Singapore nonresident withholding tax. The on-lending agreement between ECNZ and Finance provides that Finance will pay interest to ECNZ on the outstanding balance of its loan from ECNZ at the same rate that Finance receives interest on its deposits with the participating banks.

6. The existence of the Loan/Deposit Facility allows a recharacterization of the flow of funds between Finance and ECNZ. Finance does not loan its offshore borrowings to ECNZ. Instead, ECNZ lends funds to Finance under the Loan/Deposit Facility, and Finance's borrowings are therefore able to be transferred to ECNZ in repayment of those amounts rather than as loans to ECNZ. This provides a significant benefit to ECNZ because, if its payments to Finance were treated as repayment of loans, the interest payable thereon would be subject to New Zealand non-resident withholding tax. As a consequence, ECNZ would have to pay additional amounts to Finance to offset such withholding, with the result that ECNZ's offshore borrowings would become prohibitively expensive.

7. The Loan/Deposit Facility does not deprive the New Zealand Inland Revenue Department ("New Zealand Revenue") of the revenues that would otherwise be raised through such withholding tax. New Zealand Revenue derives withholding tax at the current rate of 15% on all interest payments made by ECNZ to the Japanese banks in respect of loans outstanding under the Loan/Deposit Facility. The banks are able to take advantage of tax credits afforded by their government for 100% of the amount of withholding tax deducted at source in New Zealand.

Applicants' Legal Analysis

1. Section 3(a)(3) of the 1940 Act defines an "investment company" as any issuer which:

Is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

Under the Loan/Deposit Facility, Finance's total assets consist of its deposits at non-New Zealand banks. These deposits may be deemed to be "investment securities" within the meaning of section 3(a)(3) of the 1940 Act.

2. Rule 3a-5 under the 1940 Act was adopted to provide an exemption from the requirements of the 1940 Act for finance subsidiaries such as Finance. Finance satisfies all of the requirements for an exemption from the 1940 Act set forth in Rule 3a-5 under the 1940 Act except for strict compliance with subparagraphs (a)(5) and (a)(6) of Rule 3a-5.

3. As described in paragraph six above, the flow of funds from Finance to ECNZ under the Loan/Deposit Facility is characterized as repayment of indebtedness and thus is not literally in compliance with subparagraph (a)(5) of Rule 3a-5, which requires that funds be "invest[ed] in our loan[ed] to" the parent company or a company controlled by the parent company. However, the transfer of Finance's public borrowings to ECNZ through the Loan/Deposit Facility is consistent with subparagraph (a)(5) for the following reasons. The channelling of funds through the Loan/Deposit Facility does not alter the fundamental operation of Finance as a finance subsidiary of ECNZ. Funds borrowed by Finance are delivered to ECNZ upon receipt to finance the business operations of the ECNZ Group. When payments are due on Finance's borrowings, funds for such purpose may be obtained from ECNZ.

4. Finance also may not be in strict compliance with the requirements of subparagraph (a)(6) of Rule 3a-5, which limits the types of investments that a finance subsidiary may make to "Government securities, securities of its parent company, * * * or debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act." Under the laws of Singapore, an exemption from withholding tax is available in respect of interest paid to nonresidents on deposits made with certain banks operating in Singapore, including the participating banks. Singapore law also affords an exemption from withholding tax for

interest payments to offshore persons in respect of Asian dollar bonds that have been approved in writing by the Ministry of Finance. However, Asian dollar bonds generally have a minimum maturity of more than one year and thus would not qualify for exemption from the Securities Act of 1933 (the "1933 Act") under section 3(a)(3) thereof and would not constitute permissible investments under subparagraph (a)(6) of Rule 3a-5.

5. In order to resolve uncertainties regarding Finance's eligibility for the exemption afforded by Rule 3a-5, the Applicants seek an order under section 6(c) of the 1940 Act exempting Finance from all the provisions of the 1940 Act. The Applicants believe that such an exemption from the 1940 Act would be necessary or appropriate in the public interest and consistent with both the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

6. The uncertainty respecting Finance's compliance with subparagraphs (a)(5) and (a)(6) of Rule 3a-5 is raised by the manner in which funds raised by Finance are provided to the ECNZ Group. Although as an economic matter Finance is raising funds on behalf of the ECNZ Group in the classic finance subsidiary structure, for tax efficiency purposes, funds raised by Finance outside of New Zealand are channelled through the Loan/Deposit Facility. In order for the Loan/Deposit Facility to achieve its purpose, it is necessary that amounts invested by Finance be held in the form of deposits with the participating banks.

7. Finance's participation in the Loan/Deposit Facility creates no risk to, and does not directly involve, funds borrowed by Finance from the public. The total liabilities of Finance (the sum of its public borrowings and its indebtedness to ECNZ under the Loan/Deposit Facility) will at all times equal its total assets, which are its deposits with the participating banks. In the absence of the Loan/Deposit Facility, Finance's total liabilities (that is, its public borrowings) would equal its total assets (its loans to ECNZ). Although Finance's assets will include obligations of banks, this fact is irrelevant to purchasers of Finance's debt securities, who will be entitled to rely exclusively upon the credit worthiness of ECNZ because ECNZ may (without notice to or consent of its debt holders) collapse the entire Loan/Deposit Facility on five days' notice to the participating banks, with the result that Finance's only liabilities will be its public borrowings

and its only assets will be an equal principal amount of loans to ECNZ.

8. Finance will invest in or loan to ECNZ or other members of the ECNZ Group, or apply in repayment of indebtedness to ECNZ, at least 85% of any cash or cash equivalents raised by Finance through an offering of its securities or other borrowings as soon as practicable, but in no event later than six months after Finance's receipt of such cash or cash equivalents. With the possible exception of the deposits made pursuant to the Loan/Deposit Facility, Finance does not and will not invest in, reinvest in, own, hold or trade in securities other than United States Government securities, securities of members of the ECNZ Group and debt securities (including repurchase agreements) which are exempted from the provisions of the 1933 Act by section 3(a)(3) of such Act.

Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. Finance will comply with all of the requirements of Rule 3a-5 except, to the extent and for the reasons set forth in the application, subparagraphs (a)(5) and (a)(6) thereof.

2. Finance will not offer or sell any securities in the United States unless (a) such securities are registered under the 1933 Act or (b) in the opinion of United States counsel for Finance an exemption from registration under the 1933 Act is available with respect to such offer and sale.

3. The payment of principal of, and any interest or premium on, all debt securities issued by Finance will be unconditionally guaranteed by ECNZ. The payment of dividends, payment of the liquidation preference in the event of liquidation, any payments to be made under a sinking fund, if a sinking fund is to be provided, on any non-voting preferred shares issued by Finance will be unconditionally guaranteed by ECNZ (although such guarantee may be subordinated in right of payment to other debt of ECNZ). Any convertible or exchangeable securities issued by Finance will be convertible or exchangeable only for securities issued by ECNZ or for debt securities or non-voting preferred shares of Finance meeting the foregoing requirements.

4. To ensure the availability to Finance of funds from ECNZ under the Loan/Deposit Facility sufficient to pay amounts due under its public borrowings, neither ECNZ nor Finance will permit the total amount of Finance's public borrowings to exceed the total of Finance's deposits then extant under the

Loan/Deposit Facility, so long as the tax laws and other relevant legislation permitting the functioning of the Loan/Deposit Facility remain unchanged. If there is a change in any such legislation or the Loan/Deposit Facility is discontinued for any other reason, ECNZ will, on the basis of a traditional parent-finance subsidiary relationship, promptly advance sufficient funds to Finance to enable it to repay its obligations as they fall due.

5. In connection with any offering by Finance of its securities in the United States, each of Finance and ECNZ will appoint an agent in the United States to accept service of process in any suit, action or proceeding brought with respect to such securities instituted in any state or federal court in The City of New York. Finance and ECNZ will expressly submit to the jurisdiction of any such court with respect to any such suit, action or proceeding. Such appointment of an agent to accept service of process and such consent to jurisdiction will in each case be irrevocable until all amounts due and to become due in respect of such securities have been paid. ECNZ will explicitly agree to waive any immunity it may have from jurisdiction and from execution or attachment or any process in the nature thereof in respect of any such action.

For the Commission, by the Division of Investment Management Regulation, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9709 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17442; 812-6995]

The HighMark Group; Application

April 18, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The HighMark Group, The Winsbury Company, and The Bank of California, N.A.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of Sections 18(f)(1), 18(g), and 18(i) of the 1940 Act.

SUMMARY OF APPLICATION: The HighMark Group (the "Trust"), a series investment company, proposes to create two classes of units of beneficial interest ("shares") of each of its existing

and any of its future series. A distribution fee will be imposed on only one of the two classes of shares of each series. An exemption has been requested to the extent that this proposed arrangement may result in the issuance of a "senior security" prohibited by section 18(f)(1) of the 1940 Act and may violate the equal voting provisions of section 18(i) of the 1940 Act.

FILING DATES: The application was filed on February 24, 1988, and amendments to the application were filed on February 26 and April 12, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 11, 1990, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The HighMark Group and The Winsbury Company, 1900 East Dublin-Granville Road, Columbus, Ohio 43229. The Bank of California, N.A., 400 California Street, San Francisco, California 94014.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is an open-end, diversified, management, series investment company registered under the 1940 Act. The Trust currently has nine existing series of shares (each a "Fund"; collectively, the "Funds"). Merus Capital Management (the "Adviser"), a division of The Bank of California, N.A. ("The Bank of California"), acts as the Trust's

investment adviser. The Winsbury Company acts as the Trust's principal underwriter ("Distributor") and administrator ("Administrator").

2. The Administrator is entitled to receive a fee from the Trust at an annual rate of .20% of each Fund's average daily net assets. The Distributor does not presently receive any fees from the Trust. However, in the event the Trust imposes a sales charge with respect to the shares of certain of the Funds, the Distributor would be entitled under its distribution agreement with the Trust to receive a sales charge not to exceed 4.0% of the public offering price of those Funds' shares.

3. Presently, the Trust's shares are sold to fiduciary, advisory, agency, and similar accounts maintained with The Bank of California. The Trust desires to expand the sale of its shares through The Bank of California's affiliates and correspondent banks and other banks, to other financial institutions and intermediaries, and to the general public. Banks and certain other financial institutions and intermediaries purchasing the Trust's shares may be acting in a fiduciary, advisory, agency, or other similar capacity. The Trust's shares will be sold to the general public by the Distributor and by other broker-dealers.

4. The Trust proposes to divide each Fund into two classes of shares, Class A and Class B, which will differ from each other only with respect to the imposition of a distribution fee on one class of shares pursuant to a Distribution and Shareholder Services Plan relating to such Fund (the "Plan") that the Trust has adopted pursuant to Rule 12b-1 under the 1940 Act; in the rate of dividends payable in respect of each class, which dividend rates will differ solely due to the imposition of the distribution fee only the Class A shares; and, with respect to the voting rights of each class as described below. Class A shares of the Funds will be subject to the distribution fee payable under the Plan to the Distributor at an annual rate of .25% of the average daily net assets of a Fund's Class A shares.

5. Class A shares will be issued and sold to all investors who do not qualify to own Class B shares. Class B shares will be issued and sold only to: (a) Fiduciary, advisory, agency, and other similar accounts maintained with The Bank of California or its affiliates; (b) those individual retirement accounts established with The Bank of California and invested in the Trust on November 25, 1988 and which have remained continuously open thereafter; and, (c) present and retired directors, officers and employees (and their spouses and

children under the age of 21) of The Bank of California and the Distributor.

6. The purpose of the proposed two-class structure is to allocate to the assets attributable to a Fund's Class A shares both the expenses incurred in connection with the distribution of such Fund's Class A shares and the expenses incurred in connection with shareholder services rendered to the holders of such Fund's Class A shares, while relieving the holders of a Fund's Class B shares, which do not require the kind of distribution assistance or already receive the kind of shareholder services that are contemplated by the Plan, from the burden of such expenses. The majority of investors qualifying to own Class B shares are a relatively small subset of available investors, *i.e.*, the present fiduciary customer base (including those individual retirement accounts established with The Bank of California as trustee referred to above) of The Bank of California and its affiliates. In contrast, sales of Class A shares generally will require broad marketing efforts, such as those which will be provided in connection with the Plan, because potential investors eligible to buy Class A shares generally will have limited familiarity with the Trust, the Distributor, or The Bank of California, and ordinarily will have no fiduciary relationships with The Bank of California or its affiliates.

7. Under the Plan, the Distributor may be compensated for its distribution assistance or for its shareholder services furnished to the holders of a Fund's Class A shares. The Distributor may also use the distribution fee (a) to pay financial institutions and intermediaries (such as savings and loan associations, insurance companies, and investment counselors), broker-dealers, and the Distributor's affiliates and subsidiaries compensation for services or reimbursement of expenses incurred in connection with distribution assistance or (b) to pay banks, other financial institutions and intermediaries, broker-dealers, and the Distributor's affiliates and subsidiaries compensation for shareholder services.

8. All payments by the Distributor for distribution assistance or shareholder services under the Plan will be made pursuant to an agreement (a "Servicing Agreement") between the Distributor and such bank, other financial intermediary, broker-dealer, or affiliate or subsidiary of the Distributor (each a "Participating Organization"). Under the Plan, a Participating Organization may include The Bank of California and its affiliates. The Servicing Agreements will relate to the provision of distribution assistance

and/or shareholder services to a Participating Organization's customers owning a Fund's Class A shares. With respect to any fees that may be charged by a Participating Organization to its customers in connection with investments in the Trust's shares, such fees relate to services other than those contemplated by the Plan.

9. The distribution assistance and shareholder services to be provided under the Plan or pursuant to a Servicing Agreement will not duplicate the services currently provided to the Trust by the Adviser, Administrator, Distributor, custodian, transfer agent, subtransfer agent, and Fund accountant.

10. Each Class A share and Class B share of a Fund will represent an equal pro rata interest in that Fund. The Class A shares of each Fund will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations, and terms and conditions as the Class B shares of that Fund, except that the Fund's Class A shares will be subject to a distribution fee under the Plan to which the Fund's Class B shares will not be subject, as described above, and except to the extent that only the holders of a Fund's Class A shares will be entitled to vote with respect to matters pertaining to the Fund's Plan.

11. The daily net asset value of all outstanding Class A shares and Class B shares representing interests in the same Fund will be computed on the same day and at the same time by adding the value of all portfolio securities and other assets belonging to that Fund, subtracting the liabilities charged to such Fund, and dividing the result by the number of such outstanding Class A and Class B shares. Further, the gross investment income of each Fund will be allocated on a pro rata basis to each outstanding share of such Fund regardless of class, and all expenses incurred by such Fund will be borne on a pro rata basis by such outstanding Class A and Class B shares, irrespective of class, except that only the Fund's Class A shares will bear the distribution fee under the Plan, as described above. Because only Class A shares bear the distribution fee, the net income of, and dividends payable to, such Class A shares will be somewhat lower than those paid on the Class B shares of the same Fund. Dividends and other distributions paid to each class of shares of a Fund will, however, be declared on the same days and at the same times and, except for the effect to the distribution fee to which only Class A shares will be subject, will be

determined in the same manner and paid in the same amounts. The distribution fee will be accrued daily and will be paid monthly.

12. Because the distribution fee payable in respect of a Fund's Class A shares will be collected only out of the daily net investment income attributable to such Fund's Class A shares (before accrual of the distribution fee), which amount would, but for the incidence of the distribution fee, be payable as a dividend in respect of such Fund's Class A shares, the distribution fee will reduce only the dividend payable in respect of, and not the net asset value of, the Class A share of that Fund. As a result, the net asset value per share of the Class A shares of each Fund will at all times remain the same as the net asset value per share of the Class B shares of such Fund.

13. The Trust's Board of Trustees believes that, by creating and offering Class A shares in connection with the implementation of the Plan, the Trust may be able to achieve added flexibility in meeting the service and investment needs of its future investors as well as its current shareholders. The Board further believes that if the Class A shares are created and the Plan relating to each Fund is implemented as described, it would be appropriate for the expenses of the distribution assistance and shareholder services to be borne exclusively by such class. The Board anticipates, however, that it would be inefficient, and in some instances economically or operationally unfeasible, to organize a separate series for each group of shares.

Applicants' Legal Analysis

1. Applicants request an exemption pursuant to section 6(c) of the 1940 Act to the extent that the proposed issuance and sale of two classes of shares of each Fund, as described above, might be deemed: (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act and thus to be prohibited by section 18(f)(1) of the 1940 Act; and (b) to violate the equal voting provisions of section 18(i) of the 1940 Act. Applicants request that the proposed exemptive relief from sections 18(f)(1), 18(g), and 18(i) of the 1940 Act extend not only to the Trust's existing Funds but also to any future series of shares of the Trust of which two classes of shares may be issued on a basis substantially similar to the basis of the issuance of the proposed two classes of shares of each Fund.

2. Applicants submit that, in light of the different distribution assistance and shareholder servicing needs respecting a Fund's Class A and Class B shares, it is

beneficial to the shareholders of the Trust for the compensation payments to the Distributor for distribution assistance and shareholder services to be borne by the shares in connection with which such assistance or services are rendered (that is, the Class A shares), and not to be borne by the holders of shares which do not require the kind of distribution assistance or shareholder services that are contemplated by the Plan (that is, the Class B shares). Applicants further submit that the proposed allocation of the distribution fee in the manner described is equitable and would not discriminate against any group of shareholders. While investors purchasing a Fund's Class A shares would bear the costs associated with the distribution assistance and shareholder services provided under the Plan, such investors would also enjoy exclusive shareholder voting rights with respect to matters affecting the Plan. Conversely, investors who qualify to own Class B shares would not bear such expenses or enjoy such voting rights.

3. Applicants state that the exemption it requests is appropriate and in the public interest, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief:

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except for certain differences relating to priorities with respect to the payment of dividends (such priority will reflect only the effect of the distribution fee payable with respect to a Fund's Class A shares), the designation of each class of shares of a Fund, and voting rights (which difference will relate solely to matters pertaining to the Distribution Plan with respect to which only the holders of Class A shares will be entitled to vote). Any incremental expenses other than the distribution fee applicable solely to a Fund's Class A shares which are subsequently identified and should be properly allocated to only one class of shares shall not be so allocated until approved by the SEC pursuant to an amended order.

2. The Plan relating to each Fund and the Servicing Agreements to be entered into thereunder have been and will be approved and reviewed by the Trust's Board of Trustees in accordance with the procedures set forth in Rule 12b-1

under the 1940 Act, both as presently in effect and as Rule 12b-1 may be modified in the future. Following implementation of the Plan with respect to any Fund, the Plan will be submitted to the Fund's Class A shareholders for approval at a meeting held within one year after the initial public offering of the Fund's Class A shares. The Plan and Servicing Agreements entered into thereunder with respect to each Fund, insofar as such relate to the provision of shareholder services (as opposed to distribution assistance), will be examined thoroughly and approved annually by the Trust's Board of Trustees, including a majority of the trustees who are not "interested persons" of the Trust under the 1940 Act and who have no direct or indirect financial interest in the operation of the Plan or Servicing Agreements entered into thereunder. In evaluating the shareholder services to be provided under the Plan and Servicing Agreements entered into pursuant thereto with respect to each Fund, the Trust's Board of Trustees will specifically consider whether: (a) the Plan and the Servicing Agreements are in the best interests of the Fund, each class of the Fund's shareholders, and the Fund's shareholders, as a whole; (b) the services to be performed pursuant to the Servicing Agreements are required for the Fund's operations in regard to its Class A shares; (c) the Participating Organizations and the Distributor can provide the services the nature and quality of which are at least equal to those provided by others offering the same or similar services; and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities for services of the same nature and quality. The Trust's trustees who vote to approve the Plan and Servicing Agreements as such relate to shareholder services will do so in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36 (a) and (b) of the 1940 Act. The minutes of the meetings of the Trust's Board of Trustees regarding the deliberations and approvals noted above will reflect in detail the factors considered by the Board and the basis for the Board's decisions and such minutes will be available for inspection by the SEC staff. The Trust will maintain a copy of the Plan as well as copies of all Servicing Agreements entered into pursuant thereto for a period of not less than six years from their execution, the first two years of

which such documents will be kept in an easily accessible place.

3. On an ongoing basis, the Trust's Board of Trustees pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of its two classes of shares. The Trust's Board of Trustees, including a majority of the Trust's independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Trust's Board of Trustees shall also take such action as is reasonably necessary to ensure that the Adviser, the Distributor, and the Participating Organizations entering into Servicing Agreements under the Plan will be responsible for reporting any potential or existing conflicts to the Board. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered investment company.

4. The Trust's Board of Trustees will receive quarterly and annual statements of the amounts received and expended under the Plan (including amounts expended by the Distributor to Participating Organizations pursuant to the Servicing Agreements entered into under the Plan) ("Statements") in compliance with the requirements of Rule 12b-1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of a Fund's Class A Shares will be used to justify the distribution fee applicable to such Fund; neither the Plan nor the Servicing Agreements will be utilized in such a manner as to cause any payments thereunder to subsidize the servicing of a Fund's Class B shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Trust's independent trustees in the exercise of their fiduciary duties under Rule 12b-1, as it may be amended from time to time.

5. Dividends paid by each Fund with respect to its Class A and Class B shares will be calculated in the same manner, at the same time, or the same day, and will be in the same amount except that the expense of the distribution fee payable in respect of the Class A shares under the Plan will be borne exclusively by that class.

6. The Trust will operate each Fund that has both Class A and Class B shares outstanding only when and for so long as such Fund declares a dividend daily, accrues the distribution fee payable in respect of such Fund's Class

A shares daily, and has received an undertaking from any person entitled to receive any portion of the Fund's distribution fee to waive such portion of any such payment to the extent necessary to assure that the distribution fee required to be accrued by any Fund on any day does not exceed the income to be accrued to the Class A shares of such Fund on that day. In this manner, the net asset value per share for all shares of a Fund will remain the same. The Trust's Distributor is not affiliated with the Adviser or The Bank of California. Upon implementation of the Trust's two-class structure, the Adviser will not alter its investment strategies to enhance the distribution fees to be assessed against Class A shares.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of each Fund's Class A shares and Class B shares and the proper allocation of expenses between the two classes has been reviewed by an expert (the "Expert"), and the Expert has rendered a report to the Trust, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert (or an appropriate substitute Expert) will monitor the manner in which the calculations and allocations are made and, based upon such review, will render a report to the Trust's Board of Trustees at least annually that the calculations and allocations are being made properly. The Expert's reports will be filed with the SEC with the periodic reports filed by the Trust with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act and the Expert's work papers with respect to such reports, following the Trust's request which the Trust agrees to provide, will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or of a regional office of the SEC. Authorized staff members will be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate of Assistant Regional Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in the Statement of Auditing Standards No. 44 ("SAS No. 44") of the

American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The Trust has adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of each Fund's Class A shares and Class B shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above, and will be concurred with by the Expert (or an appropriate substitute Expert) on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. The Trust will take immediate corrective action if the Expert (or appropriate substitute Expert) does not so concur in the ongoing reports.

9. If sales personnel or other persons become entitled to receive a portion of a distribution or servicing fee which differs based upon the class of shares of a Fund so purchased, the Fund's prospectus will include a statement to that effect.

10. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to its Class A and Class B shares in every prospectus, regardless of whether both classes of shares are offered through each prospectus. Each Fund will also disclose the respective expenses and performance data applicable to both classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to either class of shares, it will also disclose the respective expenses and/or performance data applicable to the other class of shares. The information provided by the Applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

11. The Distributor will obtain a representation from each Participating Organization which enters into a Servicing Agreement pursuant to the Plan that any and all compensation payable to the Participating Organization by its customers in connection with the investment of their assets in the Trust will be fully disclosed by it to its customers and authorized by such customers and will not result in an excessive fee to the

Participating Organization; in the case of a bank, the Distributor will obtain the following additional representations: (a) that the bank believes that it possesses the legal authority to perform the services contemplated by the Servicing Agreement without violation of the applicable banking laws (including the Glass-Steagall Act) and regulations; and (b) that the investment in the Trust's shares and receipt of any fees therefor pursuant to the Servicing Agreement is consistent with applicable laws and rules and regulations of the Comptroller of the Currency and, where applicable, state banking regulatory authorities.

12. Each Servicing Agreement entered into pursuant to the Plan will provide that, in the event an issue pertaining to the Plan is submitted for shareholder approval, the Participating Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

13. The conditions pursuant to which the exemptive order requested by the application is granted and the duties and responsibilities of the Trust's Board of Trustees with respect to the offering of dual classes of shares by the Trust will be set forth in guidelines which will be furnished to each trustee.

14. The Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Trust may make to the Distributor under the Plan or that the Distributor may make to a Participating Organization pursuant to a Servicing Agreement or otherwise in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9712 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17451; File No. 812-7446]

Kemper Investors Life Insurance Co., et al.

April 19, 1990.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Kemper Investors Life Insurance Company ("KILICO"), KILICO Variable Annuity Separate Account ("Variable Account") and Kemper

Financial Services, Inc. ("KFS") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS:

Exemption requested under section 6(c) of the Act from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the assessment of mortality and expense risk charges under certain group annuity contracts.

FILING DATE: The application was filed on December 21, 1989.

HEARING OR NOTIFICATION OF HEARING:

If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on May 14, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Robert J. Engling, Esq., Kemper Investors Life Insurance Company, 120 South LaSalle Street, Chicago, Illinois 60603.

FOR FURTHER INFORMATION CONTACT:

Michael V. Wible, Staff Attorney, at (202) 272-2026, or Heidi Stam, Assistant Chief, Office of Insurance Products, at (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland, (301) 738-1400).

Applicants' Representations

1. KILICO is a stock life insurance company incorporated in the State of Illinois. The Variable Account is a segregated investment account of KILICO and is registered as a unit investment trust under the Act. The Variable Account is divided into five subaccounts ("Subaccounts") that invest in shares of one of the corresponding portfolios ("Portfolios") of the Kemper Investors Fund ("Fund"). KFS is registered as an investment adviser

under the Investment Advisers Act of 1940.

2. KILICO has designed two group fixed and variable deferred annuity contracts ("Contracts") that will be offered in different markets in connection with retirement plans that are intended to qualify for federal tax advantages. One group Contract is designed specifically for distribution to retirement plans that qualify for favorable income tax treatment under the Internal Revenue Code of 1986, as amended, ("Code"), ("Qualified Plans"). This Contract, referred to herein as the "Unallocated Premium Contract" will be sold to employer-sponsored Qualified Plans on an unallocated basis. The owner ("Owner") will be the employer or the trust established in connection with the Qualified Plan. KILICO will be responsible for overall administration of the Unallocated Premium Contracts as a group. However, a plan administrator, other than KILICO, will be responsible for all aspects of administration of the particular employer's Unallocated Premium Contract, including all recordkeeping of the allocation of interests of the individual employee/participant ("Plan Participant") with respect to assets being accumulated under the Unallocated Premium Contract. Thus, KILICO itself will not be responsible for the allocation of total contract value among Plan Participants, and as a result, will not be providing any guaranteed death benefit under the Unallocated Premium Contract. Following annuitization, KILICO will be responsible for all aspects of administration and recordkeeping of Plan Participants' interests under the annuity options.

3. The second group Contract will be offered to fund benefits under retirement plans that qualify for favorable tax treatment under the Code as Qualified Plans, including plans under section 408 of the Code, and under retirement plans that do not qualify for favorable tax treatment under the Code. This Contract, referred to herein as the "Allocated Premium Contract", will be issued under state group insurance laws and participants in the group ("Participants") will be issued individual certificates ("Certificates"). The Allocated Premium Contract normally will be sold on a group payroll deduction/reduction basis. The interests of Participants will be allocated under each Certificate.

4. Owners, Plan Participants and Participants ("Owner/ Participant") will be permitted to allocate premium payments to one or more Subaccounts of the Variable Account under the

Contracts. Each Subaccount invests in shares of a corresponding Portfolio of the Fund. Each of the Contracts also will provide for allocation of premium payments to KILICO's general account under fixed accumulation options ("General Account Options"). Moreover, each of the Contracts provides for allocation of premium payments to a non-unitized separate account. The amounts so allocated earn declared interest that will be subject to a market-value adjustment ("MVA Provisions").

5. Amounts held under each Contract may be transferred between Subaccounts, into the General Account Options or to certain "guarantee periods" available under the MVA Provisions of the Contracts once every 30 days. KILICO does not charge any fee for effecting transfers under the Contracts. Owner/Participants may surrender the Contract at any time; however, partial withdrawals are not permitted in the first contract year. After the first contract year, Owner/Participants, subject to any plan restrictions and limitations imposed by the Code, may withdraw a portion of the assets being accumulated under the Unallocated Premium Contract or attributable to a Participant under the Allocated Premium Contract ("Contract Value") and held in the Subaccounts that invest in the Fund. Surrender charges may apply, as discussed below.

6. As stated above, the Unallocated Premium Contract will be sold to employer-sponsored Qualified Plans on an unallocated basis, and therefore, will not include a guaranteed death benefit. KILICO, therefore, does not assume any mortality risk for a guaranteed minimum death benefit under the Unallocated Premium Contract with respect to assets being accumulated under the Contract. KILICO, however, assumes mortality risks in connection with the annuity options that Plan Participants may elect. KILICO will assume a mortality risk under its obligation to continue making annuity payments to each Plan Participant that annuitizes under the annuity options involving life contingencies. KILICO also assumes a mortality risk under its obligation to continue making annuity payments pursuant to the guaranteed annuity purchase rates applicable to each annuity option. Thus, KILICO's mortality risks arise from its obligation to continue making annuity payments under each annuity option regardless of how long all annuitants, or any individual annuitant, might live, and regardless of the sufficiency of the funds accumulated and remaining under all annuity options. If annuitants live longer

than KILICO anticipated in establishing its annuity purchase rates, KILICO will make annuity payments from its general funds.

7. KILICO also will assume the risk that expenses actually incurred by it in offering and administering the annuity options will exceed the revenue derived from the administrative cost component of the asset-based charge imposed under the annuity option provisions. KILICO will impose an asset-based administrative charge equal to .25% annually of the average daily net assets of the Variable Account attributable to the assets held under annuity options elected by Plan Participants to compensate it for the administration and recordkeeping of each Plan Participant's interest following annuitization. KILICO and the Variable Account are relying on Rule 26a-1 under the 1940 Act in connection with the administrative cost portion of the asset-based charge, and represent that such fee is expected to produce revenue in an amount not greater than expected administrative expenses, without profit. KILICO also assumes expense risks with respect to the administration of assets being accumulated under the Unallocated Premium Contract. The expense risk is that expenses actually incurred by KILICO in issuing and administering the Unallocated Premium Contract will exceed the annual administrative fee imposed under the Contract.

8. Consistent with the above, KILICO will deduct a daily charge for mortality and expense risks equal to .60% annually of the average daily net assets of the Variable Account attributable to the unallocated assets being accumulated under the Unallocated Premium Contracts. The mortality risk component is approximately .50%, and the expense risk component of this charge is approximately .10%.

9. KILICO will deduct a daily charge for mortality and expense risks equal to 1.00% annually of the average daily net assets of the Variable Account attributable to the assets held under annuity options elected by Plan Participants. Approximately .65% is for mortality risk and approximately .35% is for expense risk.

10. The Allocated Premium Contract normally will be sold on a group payroll deduction or reduction basis. Each Participant has an allocated and severable interest in the group Contract as evidenced by an individual Certificate. KILICO generally will be responsible for administration of the Allocated Premium Contracts and the recordkeeping of the interests of the individual Owner/Participants. Each

Participant has a separate guaranteed death benefit under the Allocated Premium Contract. The guaranteed minimum death benefit payable during the accumulation period is the greater of the amounts accumulated under a Certificate ("Contract Value") as of the date KILICO receives due proof of death and return of the Contract or the total premiums paid (minus any withdrawals and loans). The guaranteed death benefit increases at the rate of 5% per year. The beneficiary will receive the Contract Value (minus loaned amounts), or the sum of all premium payments (minus withdrawals and loans) accumulated at 5% per year, whichever is greater. KILICO thus assumes the mortality risks under the Allocated Premium Contract that are described above with respect to annuity options under the Unallocated Premium Contract. In addition, under the Allocated Premium Contract, KILICO assumes the added mortality risk arising from the guaranteed and increasing death benefit. KILICO also will assume the risk that expenses actually incurred in issuing and administering the Allocated Premium Contract will exceed the revenue derived from the administrative cost component of the asset-based charge and annual administrative fees imposed under the Allocated Premium Contract.

11. KILICO will impose an asset-based administrative charge equal to .25% annually of the average daily net assets of the Variable Account attributable to the Allocated Premium Contract to compensate it for the administration and recordkeeping of each Owner/Participant's interest. This charge is imposed during the accumulation phase and the annuity payout phase. KILICO and the Variable Account are relying on Rule 26a-1 under the 1940 Act in connection with the administrative cost portion of the asset-based charge, and represent that such fee is expected to produce revenue in an amount not greater than expected administrative expenses, without profit.

12. Consistent with the above, KILICO will deduct a daily charge for mortality and expense risks equal to 1.00% annually of the daily average net assets of the Variable Account attributable to the Allocated Premium Contract. This charge is imposed during the accumulation phase and the annuity payout phase of the Allocated Premium Contract. Approximately .65% of this charge is for mortality risk and approximately .35% is for expense risk.

13. KILICO imposes an annual administrative fee ("Policy Fee") of \$100 under the Unallocated Premium

Contracts, and an annual administrative fee ("Records Maintenance Fee") of \$15 per Participant prior to annuitization under the Allocated Premium Contract. The Records Maintenance Fee is imposed at the end of each contract year or upon a total redemption by a participant. KILICO does not anticipate a profit from the Policy and Records Maintenance Fees under the Contracts.

14. No sales charges are deducted from any premium payment under the Contracts. However, to defray expenses relating to the sale of the Contracts, KILICO imposes a surrender charge upon a full or partial withdrawal of Contract Value. An Owner may withdraw up to 10% of the Unallocated Contract Value, less any loaned amounts, in any contract year after the first contract year without assessment of the surrender charge. Partial withdrawals are not permitted in the first contract year. The surrender charge starts at 5% of the amount withdrawn in the first contract year after payment and reduces by 1% each contract year thereafter, so that there is no charge in the sixth and later contract years after the payment. The surrender charge is waived if the proceeds remain with KILICO in the form of annuitization under certain annuity options or under other variable contracts offered by KILICO at the time of the surrender. In no event will the aggregate surrender charge assessed against an Unallocated Premium Contract exceed 8% of the aggregate premium payments made under the Unallocated Premium Contract. The Allocated Premium Contract provides a 10% free withdrawal provision similar to the free withdrawal provision described above. The surrender charge is 8% of the amount withdrawn in the first contract year through the fifth contract year, 5% in the sixth contract year and reduces by 1% each contract year thereafter, so that there is no charge in the eleventh and later contract years. In no event will the aggregate surrender charge assessed against an Allocated Premium Contract exceed 8% of the aggregate premium payments made under the Allocated Premium Contract.

15. KILICO has established the mortality and expense risk charges to reasonably compensate it for the assumption of the various risks incurred. Applicants state that each charge is a legitimate charge for the respective mortality and expense risks assumed. Applicants state that they have reviewed publicly available information regarding comparable annuity contracts of other companies taking into consideration such factors as:

Guaranteed minimum death benefits; guaranteed annuity purchase rates; minimum initial and subsequent purchase payments; other contract charges; the manner in which charges are imposed; market sector; investment options under contracts; and availability to Qualified and Non-Qualified Plans. Applicants have concluded that the mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. Applicants represent that they will maintain at their principal office, and make available on request to the Commission or its staff, memoranda setting forth in detail the variable annuity products analyzed and the methodology, and results of, KILICO's comparative review.

16. Applicants have acknowledged that if the revenues generated by the surrender charges are insufficient to cover all actual costs relating to the distribution of the Contracts, such costs will be paid from KILICO's general account assets, which may include any ultimate profit realized from the mortality and expense risk charges. KILICO has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to each Contract will benefit the Variable Account and the Owner/Participants. The basis for such conclusions are set forth in memoranda which will be maintained by KILICO at its principal office and will be available to the Commission or its staff upon request.

17. KILICO represents that the Variable Account will invest only in an underlying mutual fund, which undertakes, in the event any such fund should adopt any plan under Rule 12b-1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9710 Filed 4-25-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17449; 811-3076]

Venture Trust Money Market Fund; Application for Deregistration

April 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Venture Trust Money Market Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on January 18, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 15, 1990 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 124 E. Marcy Street, Santa Fe, New Mexico 87501.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end diversified management investment company registered under the Act consisting of three series, the Venture Trust Money Market Fund General Purpose Portfolio, the Venture Trust Money Market Fund Government Portfolio, and the Venture Trust Money Market Fund Tax-Free Portfolio. On July 23, 1980, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act under the name of Principal Protection Fund, Inc. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement became effective on

November 12, 1980, and applicant's initial public offering commenced on that same date.

2. On December 10, 1982, applicant reorganized itself into a Massachusetts business trust under the name of First Trust Money Market Fund. On February 1, 1988, applicant took the name of Venture Trust Money Market Fund.

3. At a meeting held on July 13, 1989, applicant's board of trustees adopted a plan of reorganization under which the applicant would transfer all of the assets and liabilities of its Government Portfolio and Tax-Free Portfolio and the assets only of its General Purpose Portfolio to corresponding portfolios of Retirement Planning Funds of America, Inc. ("RPFA"), a registered open-end management investment company (File No. 811-2679), in exchange for shares in the corresponding portfolios, and then make liquidating distributions to its shareholders of the shares of the RPFA portfolios. The shareholders of each of applicant's portfolios approved this plan at a meeting held on October 26, 1989.

4. The exchange of the assets of applicant's General Purpose Portfolio for shares of RPFA's pre-existing Money Market Fund took place on November 1, 1989. Applicant liquidated the liabilities of the General Purpose Portfolio thereafter and then made a liquidating distribution to its shareholders. The exchange between applicant's Government Portfolio and RPFA's newly-created Government Money Market Fund and between applicant's Tax-Free Portfolio and RPFA's newly-created Tax-Free Money Market Fund took place on December 1, 1989. Liquidating distributions to the shareholders of applicant's Government Portfolio and Tax-Free Portfolio took place shortly thereafter.

5. The proxy expenses of \$9,813 incurred in connection with the reorganization were assumed as follows: \$3,094 to applicant's General Purpose Portfolio, \$3,094 to applicant's Government Portfolio, and \$2,740 to applicant's Tax-Free Portfolio. The \$30,000 in legal expenses were borne one-third by RPFA's Money Market Fund, one-third by RPFA's Government Money Market Fund, and one-third by RPFA's Tax-Free Money Market Fund.

6. As of the time of filing the application, applicant had one shareholder, its former investment adviser and distributor, who was holding one share with a value of one dollar for the purpose of maintaining applicant's status as a trust. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other

than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-9711 Filed 4-25-90; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. chapter 35):

SSS-1

Title: The Selective Service System Registration Form.

Need and/or use: Is used to establish a data base for use in supplying manpower to the military services during a military emergency.

Respondents: All males age 18 who are United States citizens and those male aliens residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of 2 minutes or less on the individual respondent.

SSS-2, 3B, 3V, 3C

Title: The Selective Service System Change of Information Correction/Change, Registration Status Forms and Verification Letters.

Purpose: To insure the accuracy and completeness of the Selective Service System registration data.

Respondents: Registrants are required to report changes or corrections in data submitted on SSS Form 1.

Frequency: When changes in a registrant's name or address occur.

Burden: The reporting burden is 2 minutes or less per report.

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

Written comments and recommendations for the proposed extension of clearance of the forms should be sent within 30 days of publication of this notice to: Selective

Service System, Reports Clearance Officer, Washington, DC 20435.

A copy of the comments should be sent to: Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: April 18, 1990.

Samuel K. Lessey, Jr.,
Director.

[FR Doc. 90-9681 Filed 4-25-90; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[Application No. 02/02-5543]

Empire State Capital Corp.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102(1990)) by Empire State Capital Corporation, 330 Seventh Avenue, 15th Floor, New York, New York 10001, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Percent- age of own- ship
Joseph Ching-Yaun Wu, 330 Seventh Ave., New York, NY. 10001.	President/ Director.	29.20
Jin Wen Wang, 330 Seventh Ave., New York, NY. 10001.	Vice President/ Director.	22.12
Peter Koo, 330 Seventh Ave., New York, NY. 10001.	Secretary and Director.	13.28
Chien-Jen Huang, 330 Seventh Ave., New York, NY. 10001.	Director	13.28
Wu-Jan Lin, 330 Seventh Ave., New York, NY. 10001.	Director	11.06
Aileen Ming-Ling Cheng, 330 Seventh Ave., New York, NY. 10001.	Director	11.06

As a section 301(d) Licensee it will provide assistance solely to small business concerns which will contribute

to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: April 18, 1990.

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

[FR Doc. 90-9696 Filed 4-25-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1191]

Shipping Coordinating Committee; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on May 9, 1990 at 9 a.m. in Room 6303 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to discuss the results and activities of the 34th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), held February 19-23, 1990, and to prepare for the 35th Session of SLF, which is scheduled for February 4-8, 1991. Items of discussion will include the following: subdivision and damage stability of dry cargo ships, including Ro-Ro ships less than 100 meters; the new Code of Intact Stability; flooding protection for passenger ships; basic principles for future revisions to the 1966

Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and development of protocol to the 1977 Torremolinos Convention; the Work Program of SLF 34; and review of reporting requirements on Codes and Assembly resolutions related to the work of the subcommittee.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information contact Mr. Cojean or LCDR Anderson at (202) 267-2988, U.S. Coast Guard Headquarters (G-MTH-3/13), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: April 9, 1989.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.

[FR Doc. 90-9682 Filed 4-25-90; 8:45 am]

BILLING CODE 4710-07-M

Shipping Coordinating Committee; Meetings

Maritime Safety Committee and Associated Bodies

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on 10 May 1990, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the 58th Session of the Maritime Safety Committee and associated bodies of the International Maritime Organization (IMO) which is scheduled for 21-25 May 1990 at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and to draft U.S. positions for the Maritime Safety Committee.

Inter alia, the items of particular interest are:

- Consideration and adoption of amendments to SOLAS 74 and related codes
- Reports of Technical Sub-Committees
- Survey and Certification
- Voyage Data Recorders

National Committee for Prevention of Marine Pollution

The National Committee for Prevention of Marine Pollution (NCPMP) (a SHC Subcommittee) will conduct an open meeting at 11 a.m. on 10 May 1990 in room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of the meeting is to finalize preparations for the Preparatory Meeting for the International Conference on International Cooperation on Oil

Pollution Preparedness and Response of the Marine Environment Protection Committee (MEPC) which is scheduled for 14-18 May 1990 at the IMO Headquarters in London. The purpose of the meeting is to discuss the papers received and to draft U.S. positions for this meeting.

Inter alia, the item of particular interest is the proposed convention for cooperation on oil pollution preparedness and response.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Gene F. Hammel, U.S. Coast Guard (G-CI), 2100 Second Street SW., Washington, DC 20593 or by calling: (202) 267-2280.

Dated: April 9, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90-9683 Filed 4-25-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records; Investigative Record System

The Department of Transportation (DOT) herewith cancels its prior Notice amending the Privacy Act System of Records, DOT/FAA 815, Investigative Record System, which was issued January 26, 1990, and published on February 14, 1990, *Federal Register*, Vol. 55, pages 5322-5323. In its place, DOT republishes the Notice, as amended. Therefore, the Notice published on February 14, 1990, is void and the existing System of Records, DOT/FAA 815, as last published in the *Federal Register*, Volume II, Privacy Act Issuances 1987 Compilation, remains in effect until 30 days after the date of publication of this Notice. The FAA's implementation of section 7210, Federal Aviation Administration Drug Enforcement Assistance Act of 1988, Pub. L. 100-690, 102 Stat. 4424-4434, as it pertains to utilizing the previously published routine uses in the Privacy Act of System of Records, DOT/FAA 815, is suspended until the effective date of this revised Notice.

Due to the serious nature of the Federal Aviation Administration Drug Enforcement Assistance Act of 1988, which requires the amendments of this system of records, the FAA has submitted a letter requesting a waiver of the 60-day review period and outlining the compelling reasons for our request to the Office of Management and Budget.

Any person or agency may submit written comments on the proposed amendments to the system to the Privacy Officer (M-34) Room 7109, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments must be received by May 19, 1990, to be considered.

If no comments are received, the proposed changes will become effective May 19, 1990. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, DC, April 19, 1990.

Jon H. Seymour,

Assistant Secretary for Administration.

DOT/FAA 815

SYSTEM NAME:

Investigative Record System, DOT/FAA 815.

SYSTEM LOCATION:

These records are maintained at the Office of Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the Civil Aviation Security Staff at the FAA Technical Center, in Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for FAA employment

Current and former FAA employees
Individuals considered for access to classified information or restricted areas and/or security determinations such as contractors, employees of contractors, experts, instructors, and consultants to Federal programs

Aircraft owners

Flight instructors

Pilots

Mechanics

Designated FAA representatives

Other individuals certified by the FAA

Individuals involved in tort claims against the FAA

Employees, grantees, subgrantees, contractors, subcontractors, and applicants for FAA-funded programs

Other individuals who are of investigative interest to the FAA, law enforcement, or investigative agencies

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by the Office of Civil Aviation Security, the FAA regional Civil Aviation Security Divisions, the Mike Monroney Aeronautical Center

Civil Aviation Security Division, and the FAA Technical Center Civil Aviation Security Staff; information received in various formats as the result of investigations conducted by Federal, State, and local investigative or law enforcement agencies, which relate to the mission and function of the Office of Civil Aviation Security and field elements; and information received in various formats as the result of investigations conducted by authorized personnel of the FAA, other Federal agencies, State and local drug enforcement agencies regarding the actual or probable violation by pilots, aircraft owners, or aircraft mechanics of civil and criminal laws regulating controlled substances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Justice when: (a) The agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or, (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To disclose the records in a proceeding before a court or adjudicative body, including an administrative tribunal or hearing, before which the agency is authorized to appear, when: (a) The agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or, (d) the United States, where the agency determines the litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the

Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

To authorized representatives of U.S. air carriers where air safety might be affected.

To authorized representatives of Federal, State, local agencies and departments, including the District of Columbia, and foreign governments, who require access to the file pursuant to an investigation or inquiry conducted for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims.

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in approved security file cabinets and containers, in file folders, on lists and forms, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by name or other identifying symbols.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access and use. Computer processing of information is conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

RETENTION AND DISPOSAL:

These records are destroyed or retired to the area Federal Records Center and then destroyed in accordance with FAA Order 1350.15B, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record, category of investigation, or significance of the information contained in the record. All records are destroyed by approved methods.

SYSTEM MANAGER(S) AND ADDRESS:

The FAA Investigative Record System is decentralized and requests for such records should be directed to the appropriate system manager as follows:

For the Washington Metropolitan area, excluding Eastern Region jurisdiction: Director of Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591

For the geographical area under the jurisdiction of the various regions: Manager, Civil Aviation Security

Division, of the appropriate region (See the FAA Directory for addresses)

For the jurisdiction of the FAA

Technical Center: Manager, Civil Aviation Security Staff, FAA Technical Center, Atlantic City, NJ 08405

For the jurisdiction of the Mike

Monroney Aeronautical Center: Manager, Civil Aviation Security Division, Aeronautical Center, Oklahoma City, OK 73125

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system of records contains a record pertaining to him or her by addressing a written request to any of the systems managers identified above. The request should include enough information to allow for accurate identification of the record. For example, the full name, date and place of birth, social security number of the requester, and any available information regarding the type of record involved should be provided.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to such systems of records should contact the system manager. However, investigative data compiled for law enforcement purposes may be exempt from the access provision pursuant to 5 U.S.C. 552a(k)(2) and (k)(5).

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest information about themselves contained in this system of records should contact or address their inquiries to the Administrator or his delegate, 800 Independence Avenue, SW., Washington, DC 20591.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the subject individual, interviews, review of records, and other authorized applicable investigative techniques.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The purpose of the exemption is to protect materials classified in the national interest and to protect investigatory materials compiled for law enforcement purposes. The exemptions which have been published in the Federal Register for this system may be applied pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

Narrative statement for the Department of Transportation Federal Aviation Administration

EXPLANATION OF CHANGE:

The Federal Aviation Administration (FAA) proposes to amend the existing system of records, DOT/FAA 815, Investigative Record System, by expanding the categories of records to include information regarding illegal drug trafficking by pilots, aircraft owners, and aircraft mechanics, and by expanding the equipment configuration by adding computer system hardware and software. The latter expansion of the system of records allows for significantly greater access to the information. However, the proposed amendments will only have a minimal impact on the privacy of individuals since essentially no new routine uses have been added. Rather, the routine uses for litigation purposes have been amplified to comport to the Office of Management and Budget's Privacy Act guidance update, and have been edited for clarification and to reduce redundancy.

The categories of records in the system are amended to include information received in various formats as the result of investigations conducted by authorized personnel of the FAA, other Federal agencies, and State and local drug enforcement agencies regarding the actual or probable violation by pilots, aircraft owners, or aircraft mechanics of civil and criminal laws regulating controlled substances.

The change in the equipment configuration to include computer system hardware and software necessitates an amendment to the system description for "Storage," "Safeguards," and "Retrievability."

"Storage" is amended by adding computer processable storage media.

"Safeguards" is amended by adding the following paragraph:

Computer processing of information is conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

"Retrievability" is rewritten as follows: These records are retrieved by name or other identifying symbol.

The following statements, which are written in compliance with the terms of the Office of Management and Budget (OMB) Circular A-130, Appendix 1, entitled "Federal Agency Responsibilities for Maintaining Records About Individuals," (50 FR 52738 (1985)), describe the revised system.

1. *Purpose of system:* This is an investigative record system containing the results of investigations and inquiries conducted by the Office of Civil Aviation Security, Regional and Center Civil Aviation Security divisions or staffs, and other Federal, State, or local investigative or law enforcement agencies which relate to the mission and function of the Office of Civil Aviation Security.

2. *Authority under which the system is maintained:* Pub. L. 93-579, section 9, Privacy Act; 49 U.S.C. 322; Pub. L. 100-690, section 7210, Federal Aviation Administration Drug Enforcement Assistance Act of 1988.

3. *Effect on individual rights:* The information in this system is used in accordance with the purpose for which it was collected and in accordance with the stated routine uses. Since we are limiting the intrusion into individual privacy to what is necessary to achieve Congressional intent, this amendment is not expected to have an unduly harmful effect on individual privacy or property rights.

4. *Relationship to government agencies:* The information in the system will be provided to appropriate Federal, State, local, or foreign law enforcement agencies in the event of an indication of any violation or potential violation of the law.

5. *Security:* Access to and use of these records are limited to those persons whose official duties require such access. Computer processing of information is conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

6. *Compatibility of routine uses with the purposes for which the records were collected:* The routine uses are

compatible with the purpose for which the information was collected.

7. *OMB Control Numbers:* The following OMB control numbers apply to this system of records:

2120-0018 Certification Procedures for Products and Parts—FAR 21

2120-0020 Maintenance, Preventive Maintenance, Rebuilding, and Alteration—FAR 43

2120-0021 Certification: Pilots and Flight Instructors—FAR 61

2120-0022 Certification: Mechanics, Repairmen, Parachute Riggers—FAR 65

2120-0024 Application for Aircraft Dealer's Registration Certificate—FAR 47

2120-0034 Medical Standards and Certification—FAR 67

2120-0042 Aircraft Registration—FAR 47
[FR Doc. 90-9643 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Supplement to Department Circ., Public Debt Series—No. 10-90]

Treasury Notes, Series E-1997

April 12, 1990.

The Secretary announced on April 11, 1990, that the interest rate on the notes designated Series E-1997, described in Department Circular—Public Debt Series—No. 10-90 dated April 5, 1990, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 90-9662 Filed 4-25-90; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 90-35]

Approval of Intercoastal Inspection Co. as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Customs approval of Intercoastal Inspection Company as a Commercial Gauger.

SUMMARY: Intercoastal Inspection Company of Corpus Christi, Texas recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals in bulk and in liquid form, and vegetable and animal oils under § 151.13 of the Customs Regulations (19 CFR 151.13). Customs has determined that Intercoastal Inspection Company meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, International Inspection Company, 4506 Corona St., Corpus Christi, Texas 78411, is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: April 24, 1990.

FOR FURTHER INFORMATION CONTACT:

Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Ave. NW, Washington, DC 20229 (202-566-2446).

Dated: April 20, 1990.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 90-9629 Filed 4-25-90; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 81

Thursday, April 26, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 1, 1990, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

1. Recommendation to Terminate 1938 Memorandum of Understanding Between USDA and FCA on Grazing Rights;

*Closed Session

2. Consent Calendar;
 - a. Terminations
 - b. FCB of Louisville—Request Pursuant to Section 5.65(d)(1) of the Act (Employment Prohibition)
 - c. Farm Credit Corporation of America in Receivership
3. Consideration of FCB CEO Compensation Requests;
4. FCB of Springfield—Sale of Assets; and
5. Reorganizations Involving Possible Supervisory Conditions.

Dated: April 24, 1990.

Curtis M. Anderson,
Secretary, Farm Credit Administration Board.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

[FR Doc. 90-9890 Filed 4-24-90; 3:21 pm]

BILLING CODE 6705-01-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 10:00 a.m. on Monday, April 30, 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: Final amendments to Part 330 and 331 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," and "Insurance of Trust Funds," respectively, which amendments clarify and define the extent of deposit insurance provided for accounts at insured depository institutions.

Memorandum and resolution re: Amendments to Part 345 of the Corporation's rules and regulations, entitled "Community Reinvestment Act," which amendments implement changes in the Community Reinvestment Act contained in Title XII of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Memorandum and resolution re: Notice of request for comments and information on the issues to be explored by the Corporation in its study of risk-based deposit insurance assessments.

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: April 23, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 90-9788 Filed 4-23-90; 4:59 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 10:30 a.m. on Monday, April 30, 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)(4), (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 the Inspector General:

Audit Report re:

Audit of the Legal Case Management System (Memo dated March 9, 1990)

Audit Report re:

Financial Statements for Mt. Whitney Savings and Loan Association as of September 30, 1988 (Memo dated March 27, 1990)

Audit Report re:

Financial Statements for Sierra Savings and Loan Association as of September 30, 1988 (Memo dated March 27, 1990)

Audit Report re:

Financial Statements for San Marino Savings and Loan Association as of September 30, 1988 (Memo dated April 5, 1990)

Audit Report re:

Inventory Closing Procedures, New York Asset Liquidation Office (Memo dated March 29, 1990)

Audit Report re:

Inventory Closing Procedures, Orlando Consolidated Office (Memo dated March 30, 1990)

Audit Report re:

Bossier City Consolidated Office, Cost Center—205 (Memo dated March 23, 1990)

Audit Report re:

New York Asset Liquidation Office, Cost Center—510 (Memo dated March 23, 1990)

Audit Report re:

Oklahoma City Consolidated Office, Cost Center—401 (Memo dated March 23, 1990)

Audit Report re:

San Jose Consolidated Office, Cost Center—604 (Memo dated April 13, 1990)

Audit Report re:

Audit of Abandonments of Owned Real Estate—Houston Consolidated Office (Memo dated March 23, 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), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

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: April 23, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90-9789 Filed 4-23-90; 4:59 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO. 90-9252.

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, April 26, 1990, 10:00 a.m.

By direction of the Federal Election Commission, the above-noted meeting has been cancelled.

DATE AND TIME: Tuesday, May 1, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed To The Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 3, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open To The Public.

MATTERS TO BE CONSIDERED:

Future Meetings

Correction and Approval of Minutes

Draft Advisory Opinion 1990-4:

Ms. Amy L. Pomplin, on behalf of American Veterinary Medical Association PAC Revised Draft Allocation Regulations and Reporting Forms.

Proposal for Revision of Commission Practice Regarding the Issuance of Questions and Document Requests in Commission Enforcement Cases.

Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commerce.

[FR Doc. 90-9889 Filed 4-24-90; 3:18 p.m.]

BILLING CODE 6715-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, May 7, 1990, and at 8:30 a.m. on Tuesday, May 8, 1990, in Washington, D.C. The May 7 meeting, at which the Board will discuss possible strategies in collective bargaining negotiations, is closed to the public. (See 55 F.R. 13216, April 9, 1990). The May 8 meeting is open to the public and will be held in the Benjamin Franklin Room at Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

May 7—1:00 p.m. (Closed)

1. Status Report on Preparations for Collective Bargaining. (Davis H. Charters, Senior Assistant Postmaster General, Human Resources Group, and Joseph J. Mahon, Jr., Assistant Postmaster General, Labor Relations Department)

Tuesday Session

May 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, April 2-3, 1990.

2. Remarks of the Postmaster General. (Anthony M. Frank)

3. Officer Compensation. (Mr. Frank)

4. Quarterly Report on Financial Performance. (Comer S. Copple, Senior Assistant Postmaster General, Finance Group)

5. Report of Finance Group Programs. (Mr. Copple)

6. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)

7. Status Report on Postal Source Data System (PSDS) Project. (Richard D. Weirich, Assistant Postmaster General, Information Resource Management Department)

8. Tentative Agenda for June 4-5, 1990, meeting in Anchorage, Alaska.

David F. Harris,

Secretary.

[FR Doc. 90-9848 Filed 4-24-90; 1:46 pm]

BILLING CODE 7710-12-M

RESOLUTION TRUST CORPORATION

Notice of Withdrawal of Agenda Item From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "Discussion Agenda" of the open meeting of the Resolution Trust Corporation Board of Directors scheduled to be held at 2:00 p.m. on Tuesday, April 24, 1990, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.:

Memorandum re:

RTC Policy on the Accelerated Resolution Process

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 898-3604.

Dated: April 20, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90-9787 Filed 4-23-90; 4:58 pm]

BILLING CODE 6714-01-M

**SECURITIES AND EXCHANGE COMMISSION
Agency Meeting**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of April 23, 1990.

An open meeting will be on Friday, April 27, 1990, at 1:00 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has

certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Friday, April 27, 1990, at 1:00 p.m., will be:

The Commission will hear oral argument in connection with its review of an administrative law judge's initial decision with respect to Arthur James Huff. For further information, please contact Herbert Efron at (202) 272-7400.

The subject matter of the closed meeting scheduled for Friday, April 27, 1990, following the 1:00 p.m. open meeting will be:

Post oral argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2200.

Dated: April 23, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9771 Filed 4-23-90; 4:18 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 55, No. 81

Thursday, April 26, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

Correction

In notice document 90-9210 beginning on page 14997 in the issue of Friday, April 20, 1990, make the following correction:

On page 14997, in the third column, under **DATES**, "May 11-20, 1990." should read "May 11-12, 1990."

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreements Filed

Correction

In notice document 90-8864 beginning on page 14356 in the issue of Tuesday, April 17, 1990, make the following corrections:

1. On page 14357, in the 1st column, in the 29th line, the "Agreement No.:" should read "212-010386-015".
2. On the same page, in the 2nd column, in the 11th line, the "Agreement No.:" should read "212-010389-012".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 111

Forwarding/Return Charges for Third-Class Mail

Correction

In rule document 90-8984 beginning on page 14419, in the issue of Wednesday,

April, 18, 1990, make the following correction:

On page 14419, in the third column, under 691.5 [Amended], in the second line, "2.471" should read "2.472".

BILLING CODE 1505-01-D

RESOLUTION TRUST CORPORATION

12 CFR Part 1611

RIN 3205-AA04

Retention of Thrift Branches Acquired by Banks in Emergency Acquisitions

Correction

In proposed rule document 90-8219 beginning on page 13543, in the issue of Wednesday, April 11, 1990, make the following correction:

On page 13544, in the first column, in the next to the last line, "consideration" should read "consolidation".

BILLING CODE 1505-01-D

Federal Register

Thursday
April 26, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair
Housing and Equal Opportunity

Fair Housing Assistance Program; Non-
Competitive Solicitation; Notice of
Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-90-3029; FR-2723-N-01]

Availability of Funding Under the Fair Housing Assistance Program; Non-Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for funding under the redesigned Fair Housing Assistance Program. Applications are solicited for capacity building and incentive funding only. Contributions agencies which are eligible only for complaint processing and training support are not required to submit an application. Agencies must meet the specific eligibility criteria in this announcement and the requirements in 24 CFR part 111 to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Programs Division, Office of Fair Housing and Equal Opportunity, Room 5212, 451 Seventh Street, SW., Washington, DC 20410-2000. Telephone (202) 755-0455 (V and TDD). (This is not a toll-free number.) Application kits are available to eligible State and local fair housing agencies upon written or telephone request directed to the appropriate HUD Regional Office of Fair Housing and Equal Opportunity. To ensure a prompt response, requests for application kits should be made by telephone.

DATES: An application for funding under this NOFA will be available following publication of the NOFA. The deadline for receipt of applications for funding will be announced in the application kit. The due date will be no more than 45 days after the kit is available or the date of the Monday following, if the 45th day falls on a weekend. (No application received after the closing date will be considered unless it qualifies for a late application exception as specified in the Application Kit.)

SUPPLEMENTARY INFORMATION: This announcement of solicitation for capacity building and incentive funding under the Fair Housing Assistance Program (FHAP) is issued in accordance with 24 CFR part 111. Interested agencies are urged to review 24 CFR parts 111 and 115 and the information in this announcement to determine eligibility to apply. State and local

agencies recognized as substantially equivalent, including any State or locality that has entered into an agreement for interim referrals under § 115.11 before the date of enactment of the Fair Housing Amendments Act of 1988 (*i.e.*, September 13, 1988), remain eligible for FHAP funding. (An agency cannot be eligible for both capacity building and incentive funding.)

The FHAP was redesigned in 1989 to replace the administrative funding system of competitive and noncompetitive funding with a single non-competitive funding approach. On May 9, 1989, HUD published a final rule (54 FR 20094) implementing the redesigned FHAP. This new comprehensive approach gives recipients an increased ability to plan a long-term program that is more suitable to their fair housing enforcement needs and gives HUD the ability to improve administration of the FHAP. The purpose of the funding program is to provide support for capacity building, complaint processing, training, technical assistance, data and information systems, and other fair housing projects. The intent of the program is to build a coordinated intergovernmental effort to further fair housing and to encourage States and localities to assume a greater share of the responsibility for administering their fair housing laws.

Background

The Fair Housing Act (42 U.S.C. 3601-19) ("Act") prohibits discrimination in the sale or rental of housing, in residential real-estate related transactions, in the provision of brokerage services and in other housing practices. Discrimination is prohibited on the basis of race, color, religion, sex, familial status, handicap, or national origin. Section 810(f) of the Act provides that, "Whenever a complaint alleges a discriminatory housing practice (A) within the jurisdiction of a State or local public agency; and (B) as to which such agency has been certified by the Secretary [for the referral of complaints of discriminatory housing practices], the Secretary shall refer such complaint to that certified agency before taking any action with respect to such complaint." Section 817 of the Act provides, among other things, that the Secretary may utilize the services of State and local agencies charged with the administration of State and local fair housing laws and "may reimburse such agencies and their employees for services rendered to assist him in carrying out" the Fair Housing Act. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing enforcement

capabilities of State and local civil rights agencies.

FHAP Funding Requirements in This Announcement

I. Eligibility

To be eligible to apply for funds under the FHAP, an agency first must meet the criteria prescribed in 24 CFR 111.107. Specifically:

(A) The agency must be certified as a substantially equivalent agency under the standards set forth at 24 CFR part 115, or the agency must have entered into a written agreement for interim referral or other utilization of services, as set forth at 24 CFR 115.11.

(B) The agency must have executed a written Memorandum of Understanding with HUD which, at a minimum, describes the working relationship to be in force between the agency and HUD. An agreement for interim referral of complaints in accordance with 24 CFR 115.11 may constitute such a Memorandum of Understanding.

(C) The agency must demonstrate to HUD that the agency has acceptable procedures for cooperating with other FHAP-funded agencies having concurrent jurisdiction.

(D) The agency must not unilaterally reduce the level of financial resources currently committed to fair housing complaint processing. Budget and staff reductions occasioned by legislative action outside the control of the agency will not, alone, result in a determination of ineligibility. However, HUD will take such actions into consideration in assessing the ongoing viability of an agency's fair housing program.

(E) The agency must participate in training sponsored by HUD and designed in consultation with HUD staff and agency representatives to provide uniform skills and technical knowledge.

II. Additional Criteria for Incentive Funding

In addition to the criteria in section I above and 24 CFR 111.107, an applicant for incentive funds also must meet the following additional criteria:

(A) The agency must have processed a minimum number of dual-filed complaints during the period October 1, 1988 through September 30, 1989. The minimum number for States is 20 and the minimum number for localities is 15. To be considered a processed complaint, a complaint must be cognizable under the Fair Housing Act (42 U.S.C. 3601-19) and accepted by the HUD Regional Office as meeting the processing requirements under the Cooperative

Agreement in effect during that time period;

(B) The agency must have engaged in comprehensive and thorough investigative activities relative to complaints dual-filed with HUD, as determined by HUD based on its most recent annual performance evaluation under 24 CFR part 115 and through monitoring of FHAP Cooperative Agreements in effect during the period from October 1, 1988 through September 30, 1989;

(C) The agency must have completed administrative processing of complaints in a timely manner.

(D) The agency must demonstrate (as certified by the head of the agency) that during the agency's most recently concluded fiscal year, a minimum of 20 percent of funds spent by the agency for fair housing activities was from non-Federal sources.

(E) The agency must have performed satisfactorily, in HUD's determination, in the timely submission of vouchers.

III. Eligible Activities

The primary purpose of capacity building and incentive funds is to support activities that produce increased awareness of fair housing rights and remedies. All activities proposed for funding must address, or have ultimate relevance to, matters affecting fair housing which are cognizable under the Fair Housing Act (42 U.S.C. 3601-3619). These activities include, but are not limited to, the following:

A. Activities designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination prohibited under the Fair Housing Act and to increase public awareness of fair housing rights and responsibilities.

B. Activities designed to create, modify, or improve local, regional, or national information systems concerned with fair housing matters.

C. Activities designed to improve an agency's capabilities to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

D. Activities to develop and conduct a testing or auditing program for specific protected classes or special market areas for fair housing enforcement or litigation.

E. Activities designed to identify new or subtle practices of housing discrimination and to implement programs to eliminate such practices.

F. Activities designed to address violence and intimidation affecting equal housing opportunity. These activities may include education,

technical assistance, or the development of programs for prevention and response.

G. Activities designed to coordinate fair housing enforcement efforts of governmental enforcement agencies with various community resources which have an impact on the prevention or elimination of discriminatory housing practices.

H. Technical assistance activities to enable agencies to work with private fair housing groups, educational institutions, the real estate industry, and other private and governmental entities to eliminate or prevent housing discrimination.

I. Activities to provide services to aggrieved individuals, consistent with rights and remedies under applicable Federal, State, and local laws prohibiting discrimination in housing.

J. Affirmative marketing activities to inform persons of housing opportunities with respect to government-assisted housing and the private housing market.

K. Activities designed to improve investigations of systemic discrimination for further processing by State and local agencies, HUD, or the Department of Justice.

L. Fair housing training for enforcement agency staff.

M. Activities designed to create, modify, or improve an agency's complaint information and monitoring capacity, to make its system compatible with HUD's for internal monitoring of fair housing complaint activity.

N. Activities designed to achieve substantial equivalency certification (e.g., amending relevant laws).

IV. General Provisions Governing Applications for Assistance

Each application for capacity building or incentive funds must include:

A. A description of the applicant agency's proposed activities and objectives. Applicants who receive funding under the education and outreach components of the Fair Housing Initiatives Program (FY 89 and FY 90 NOFAs) will not be able to use FHAP funding under this NOFA to support the same activities under FHIP. (To promote applicant awareness of FHIP-funded activities being conducted by other entities within the same jurisdiction or geographic area, HUD will provide a listing in the application kit of all agencies and organizations selected for funding under the Fair Housing Initiatives Program (FHIP). This listing will help ensure that any activities to be funded under FHIP in the same jurisdiction or geographic area will not be duplicated by activities to be funded under this NOFA.)

B. A schedule for completion and estimated cost of each proposed activity.

C. For all capacity building applicants, information to justify the amount of funds requested, including the need for activities proposed and the number of fair housing complaints processed during the previous fiscal year.

V. Certification

Each applicant must certify that:

A. The submission of the application is authorized under State or local law (as applicable), and the applicant possesses the legal authority to carry out the activities proposed in the application.

B. The agency will adhere to a written agreement (Memorandum of Understanding or Interim Agreement) governing all fair housing referral activity and complaint processing between the agency and the appropriate HUD Regional Office.

C. An applicant for incentive funds must also certify, on the basis of the supporting documentation submitted, that 20 percent of the funds spent by the agency for fair housing activities in the agency's most recently concluded fiscal year was from non-Federal sources.

VI. Methods of Distribution

A. Scope: Applications are solicited for capacity building and incentive funding as described at 24 CFR 111.105. A total of \$5.6 million is available under this Announcement.

B. Categories of Funding:

1. Funding of Capacity Building Agencies: Under 24 CFR 111.105(a), HUD will award \$35,000 during each of the first two years of participation in the FHAP to each capacity building agency which submits an acceptable application, except that HUD (based upon HUD's receipt of complaints from the capacity building jurisdiction) will give \$40,000 to a capacity building agency that received 15 or more complaints during the period from October 1, 1988 through September 30, 1989.

The application must demonstrate, to HUD's satisfaction, that the agency has received (or will receive) a sufficient volume of complaint activity to justify HUD's provision of funds for complaint processing activities. The application must state the objectives and activities to be carried out by the applicant. (See section III for types of eligible activities.) Agencies must agree to participate in HUD-sponsored training. Where an agency has not yet developed a Complaint Monitoring and Reporting System (CMRS), it must agree to design

and implement a CMRS satisfactory to HUD.

2. **Funding of Contributions Agencies.** Agencies which have received two years of awards for capacity building (Contributions Agencies) are eligible to receive training funds, complaint processing funds and, for those agencies meeting the additional criteria specified in section II above, incentive funds.

a. **Training Funds:** Each Contributions agency will receive \$4,000 to support participation of no fewer than 4 persons in HUD-sponsored or HUD-approved fair housing training. These funds are intended to support attendance at HUD-sponsored training at national and regional training sites. These monies also may be used to support additional in-house training by agencies for agency-specific problems, and for training of staff unable to attend national or regional training, subject to the approval of the HUD Government Technical Representative.

b. **Complaint Processing Funds:** Contributions agencies will receive support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by them during the twelve-month period beginning October 1, 1988 and ending September 30, 1989. (See 24 CFR 111.105(b).) (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be \$750 per complaint.

c. **Incentive Funds:** A contributions agency that meets the additional criteria for incentive funds set forth in section II above may apply for incentive funds, describing those projects that would benefit their jurisdiction. The amount of funds awarded to an agency will be based on the population of the jurisdiction served by the agency, and on the projects proposed and the cost of implementing those projects. HUD will use 1988 U.S. census estimates to determine a jurisdiction's population. Population figures for counties will exclude population figures for substantially equivalent cities within those counties. The maximum amount of funds based on population ranges is as follows:

Population range	Maximum amount (dollars)
Fewer than 100,000	25,000
100,000 to 499,999	35,000
500,000 to 999,999	45,000
1,000,000 to 3,999,999	55,000
4,000,000 to 9,999,999	65,000
10,000,000 and above	75,000

C. **Applications:** To receive capacity building or incentive funding, applicants must submit all information required in the FHAP application kit. The amount and method of determining an eligible agency's capacity building or incentive funding will be included in the application kit. (Contribution agencies which are eligible for funding to support complaint processing and training activities only will automatically be sent a Cooperative Agreement and are not required to submit an application. The Agreement will include the allotment for training and case processing support.) (The information collection requirements were approved by the Office of Management and Budget under control number 2529-0005.)

VII. Application Review, Notification, and Award Procedures

A. **Review:** Applications for capacity building and incentive funding will be reviewed upon receipt for completeness and conformity with 24 CFR part 111. With respect to any applications for funding in which the responsible HUD Regional Office has found deficiencies, the Regional Office will notify the applicant in writing of the deficiencies found. The applicant must, within 20 days from receipt of notification from the Regional Office, correct the deficiency or supply the additional information that the Regional Office requests. HUD may consider an applicant's failure to respond appropriately within the 20-day period as an abandonment of the application.

B. **Appeal:** If the applicant is notified by the Regional Office that, notwithstanding its attempt to correct the deficiency or supply the requested information, the applicant has failed to do so (in the determination of the Regional Office), the applicant may appeal this determination to the Assistant Secretary for Fair Housing and Equal Opportunity.

C. **Notification:** An application for funding will be considered approved as of the date of HUD's written offer to the applicant to enter into a Cooperative Agreement.

D. **Negotiations:** After submission of an application, but before the award, HUD may require the applicant to participate in negotiations and submit application revisions resulting from those negotiations. HUD expects to make awards within four weeks after negotiations are successfully completed.

E. **Type of Funding Instrument:** Applicants will be funded under fixed-price Cooperative Agreements.

VIII. Lobbying Activities—Prohibition and Disclosure

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (Pub. L. 100-121) and the implementing regulations at 55 FR 6736 (February 26, 1990). These authorities generally prohibit recipients of Federal contracts, grants, or 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. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Additionally, a recipient must file a disclosure if it has made or agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds.

Collection of Information
Requirements contained in section VI of this notice were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been approved and assigned OMB control number 2529-0005.

Executive Order 12606, the Family.
The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this NOFA will not have potential significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the order. The NOFA, insofar as it funds the fair housing enforcement activities of State and local agencies, will assist families who are the victims of discriminatory housing practices.

Executive Order 12612, Federalism.
The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to State and local fair housing agencies, none of its provisions will have an effect on the relationship of the States or their jurisdictions with the Federal government.

The Catalog of Federal Domestic Assistance program number is 14.401.

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 of No Significant Impact 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.

Authority: Fair Housing Act (42 U.S.C. 3601-19); sec. 7(d), Department of Housing

and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 6, 1990.

Gordon H. Mansfield,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 90-9621 Filed 4-25-90; 8:45 am]

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Thursday
April 26, 1990

Part III

Environmental Protection Agency

48 CFR Part 1509 et al.

Acquisition Regulation Concerning
Conflicts of Interest; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1509, 1510, 1512, 1527, and 1552

[FRL-3758-2]

Acquisition Regulation Concerning Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule with request for comments.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) coverage on organizational conflicts of interest for Superfund and for other than Superfund contracts, and, adds EPAAR coverage on conflicts of interest related to contractor personnel working under EPA Superfund contracts. Under this proposed rule, contracts funded through EPA's Superfund program will contain clauses: requiring contractor employees working on EPA Superfund contracts to sign confidentiality agreements; requiring a contractor to notify the Agency immediately of any conflicts of interest regarding contractor personnel working on the EPA contract; and restricting a contractor's future contracts, outside of those with EPA, when such contracts may conflict with the work performed for EPA. These changes are necessary to avoid actual, apparent or potential conflicts of interest in work performed under EPA Superfund contracts.

DATES: Written comments on this proposed rule must be received on or before May 29, 1990.

ADDRESSES: Comments should be addressed to Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street SW., Washington, DC 20460, attn: Katherine J. Seikel.

FOR FURTHER INFORMATION CONTACT: Katherine J. Seikel at (202) 475-7000).

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Regulation (FAR) section 9.501 defines organizational conflicts of interest as situations which may, without some restriction on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work. Under EPA's Superfund program, contractors are often asked to assist the Agency in designing remedial actions to cleanup hazardous waste sites, to

identify potentially responsible parties at hazardous waste sites, and to implement actions to effect the cleanup. After identification of potentially responsible parties for specific sites, the Agency will attempt to recover costs expended for cleanup either through consent agreements or litigation.

Under the Superfund program it is essential that contractors not enter into outside contracts or use personnel which might result in an actual, apparent or potential conflict of interest. In addition, since litigation may continue for several years after a contractor has completed work and the contractor may be asked to testify on the work performed for the Agency, it is essential that actual, apparent or potential conflicts of interest be avoided even after the contract work has been completed.

In addition to organizational conflicts of interest, EPA must ensure that contractor personnel assigned to work on EPA contracts are free from personal conflicts of interest that might impair or appear to impair that employee's ability to perform the required work in an impartial manner. EPAAR clauses have been developed which will require EPA's Superfund contractors to ensure that actual, apparent or potential personal conflicts of interest regarding contractor personnel are identified and reported to the EPA Contracting Officer.

These clauses shall be incorporated into solicitations and new contracts. Clauses for contracts existing as of the effective date of this rule shall be negotiated by the EPA Contracting Officer and shall be substantially similar to the clauses set forth in this proposed rule.

The following is a description of the proposed rule's changes to EPAAR contract clauses. The associated EPAAR guidance prescribing when to use these clauses has also been modified to instruct Contracting Officers on the proper use of these clauses.

EPAAR 1552.209-71, Organizational Conflicts of Interest, is modified to specify that notification of actual, apparent or potential organizational conflicts of interest should be made prior to commencement of work. However, in emergency situations, work may begin with notification being made within five work days. For Superfund contracts, the clause also identifies specific subcontracts and consultant agreements for which this clause is not required.

EPAAR 1552.209-73, Notification of Conflicts of Interest Regarding Personnel, is added for Superfund contracts to ensure that contractors notify the Contracting Officer of actual,

apparent or potential personal conflicts of interest prior to incurring costs. The clause also identifies specific subcontracts and consultant agreements for which this clause is not required.

EPAAR 1552.209-74, Limitation of Future Contracting, is added for Superfund contracts to ensure that contractors do not perform work for outside sources that might conflict with work under the EPA contract. Depending on the specific work performed, this limitation may extend for a period of up to seven years after completion of the work assignment or the contract, subject to Contracting Officer approval allowing such outside work to be performed. The clause also identifies that any bids/proposals for outside work that are subject to Contracting Officer approval and which must be submitted by the contractor prior to receipt of such written approval, are submitted at the contractor's own risk and expense. This clause must also be placed in subcontract and consultant agreements except for specific types of services listed in the clause.

Limitation of Future Contracting, Alternate V, (Technical Enforcement Support (TES) contracts) paragraph (b) includes a prohibition against contracting for remedial planning and/or implementation projects for sites within the regions covered by the contract, without prior written approval of the EPA Contracting Officer. Comments are requested on this paragraph. As an alternative, EPA considered an option which would preclude contractors from contracting for remedial planning and/or implementation projects at sites where the potential responsible parties (PRPs) are the same as those at sites where the contractor performed work for EPA. EPA also requests comments on this option.

EPAAR 1552.210-78, Annual Certification and Update of Conflict of Interest Plan, is added to require an annual certification on Superfund contracts that all actual, apparent or potential organizational and personal conflicts of interest have been reported to EPA. The clause also requires the contractor to provide the Contracting Officer with an update of any changes to the contractor's conflict of interest plan.

EPAAR 1552.212-71, Work Assignments, is amended to add an alternate clause to be used for Superfund contracts. The alternate clause requires contractors to certify upon acceptance of a work assignment that all actual, apparent or potential organizational conflicts of interest have been reported to the Contracting Officer.

or that no actual, apparent or potential organizational conflicts of interest exist. The alternate clause also requires the contractor to certify at the time of work plan submission that all actual, apparent or potential personal conflicts of interest have been reported to the EPA Contracting Officer and that no actual, apparent or potential personal conflicts of interest exist.

EPAAR 1552.227-76, Project Employee Confidentiality Agreement, is added to ensure that EPA cost recovery efforts under the Superfund program are not damaged by a contractor employee's release of information which has either been provided to the contractor or first generated under the contract. Employees of contractors, employees of subcontractors, and consultants will be prohibited from release of such information to parties outside of EPA, the Department of Justice or the contractor without permission of the EPA Contracting Officer. Superfund contractors will be required to obtain confidentiality agreements from all employees working on requirements under the contract. The contractor must also include the clause in all subcontracts and consultant agreements unless specifically excluded under this clause.

B. Executive Order 12291

OMB Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by EPA (ICR No. 1550) and a copy may be obtained from Sandy Farmer, Information Policy Branch, PM-223, EPA, 401 M St., SW., Washington, DC 20460, or by calling (202) 382-2706.

Public reporting burden for this collection of information is estimated to average forty (40) 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.

Submit comments regarding the burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, EPA, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Regulatory Flexibility Act

The proposed rule may have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The following initial regulatory flexibility analysis has been prepared.

Initial Regulatory Flexibility Analysis; Conflict of Interest

1. Purpose

The EPA is adding additional coverage in the EPAAR to guard against conflicts of interest in work performed under Superfund contracts. Prime contractors, subcontractors and consultants working under EPA Superfund contracts will be required to: Have employees sign confidentiality agreements; immediately notify EPA of any conflicts of interest regarding contractor personnel working on the EPA contract; submit to EPA certifications concerning disclosure of conflicts of interest; and seek Contracting Officer approval of other work when such work might conflict with work performed under an EPA contract.

2. Affected Small Entities

Small entities awarded EPA Superfund contracts or small entities serving as subcontractors or consultants under EPA Superfund contracts will be affected. Presently approximately 75 small entities are performing such contracts and subcontracts. It is impossible to estimate the number of small businesses that ultimately will receive EPA Superfund contracts or serve as subcontractors or consultants under these contracts and, thereby, be affected by this proposed rule.

3. Description of Projected Reporting and Recordkeeping Requirements

It is estimated that businesses generally maintain data on the work previously performed by the company in their normal business practices which is also used to prevent conflicts of interest. For entities that maintain this data, there will be only minimal additional

costs associated with reviewing, evaluating, and reporting work previously performed and future work being considered that may pose a conflict of interest. Contractors will be required to certify annually that all actual, apparent or potential conflicts of interest have been reported to EPA. Additionally, contractors, subcontractors, and consultants will be required to obtain and maintain agreements from their employees that information related to the contract will be kept confidential. EPA anticipates that any cost increases experienced by these entities may be chargeable to Government contracts under the provisions of FAR part 31.

4. Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

The EPA reviewed the FAR coverage on organizational conflicts of interest and rights in data, which this proposed rule supplements.

The FAR requires Contracting Officers to identify and evaluate potential organizational conflicts of interest before contract award and to avoid, neutralize or mitigate significant potential conflicts. This proposed rule fulfills and is consistent with these requirements. In addition, this proposed rule will address limitations on a firm's other contracting efforts during or in some cases after performance of the EPA contract. The FAR also recognizes that Federal agencies may restrict a contractor's right to distribute or use data first produced in performance of a contract when necessary in the furtherance of the agency mission objectives. The proposed rule's requirement for contractor employees working under Superfund contracts to sign confidentiality agreements restricting release of contract data and other information generally conforms to these FAR requirements.

The EPA also reviewed the Office of Federal Procurement Policy (OFPP) Policy Letter 89-1, published in the December 18, 1989, *Federal Register*, dealing with consultants and conflicts of interest. The Policy Letter deals with conflict of interest standards for advisory and assistance service contracts and marketing consultants to contractors. The EPA guidance specifically addresses EPA contracts and subcontracts under the Superfund program. Although both the OFPP Policy Letter and the EPA guidance have the same general objectives of identifying, mitigating and avoiding conflicts of interest, the EPA provisions include reporting requirements to ensure that

conflicts of interest are reviewed not only prior to contract award, but also during the period of contract performance and after contract performance to ensure enforcement actions are not prejudiced. It is only in this way that EPA can examine whether a contractor's work efforts, which may be initiated during the EPA contract performance period or in some cases thereafter, may present an unacceptable risk to the Agency.

5. Alternatives to the Proposed Rule

EPA considered alternatives to the proposed rule, such as establishing different compliance or reporting requirements or simplifying the requirements for small entities. EPA also considered exempting small entities from all or part of the proposed rule. The EPA concluded that the stated objectives cannot be met under such alternatives. An undisclosed conflict of interest poses the same risk to EPA whether it is a conflict involving a large or small business contractor. EPA believes the proposed rule, along with other established internal controls within the Agency, will avoid actual, apparent or potential conflicts of interest that may jeopardize future actions by the Agency.

List of Subjects in 48 CFR Parts 1509, 1510, 1512, 1527, and 1552

Contract clauses, Contract delivery or performance, Contractor qualifications, Copyrights, Data, Government procurement, Patents, Purchase descriptions, Solicitation provisions, Specifications, Standards.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

1. The authority citation for parts 1509, 1510, 1512, 1527, and 1552 continues to read as follows:

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

PART 1509—CONTRACTOR QUALIFICATIONS

2. Section 1509.508 is amended by revising paragraph (c) to read as follows:

1509.508 Solicitation provision and contract clauses.

(c) *Required contract clauses.* (1) The Contracting Officer shall include the clause at 1552.209-71, in all solicitations and contracts in excess of the small purchase limitation and, as appropriate, in small purchases. However, the Contracting Officer need not include this

clause when a specific clause is developed as prescribed in FAR 9.508-2. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(2) The Contracting Officer shall include the clause at 1552.209-73 in all solicitations and contracts for Superfund work.

(3) The Contracting Officer shall include the clause at 1552.209-74 in all Alternative Remedial Contracting Strategy (ARCS) and Remedial (REM) solicitations and contracts, except site specific solicitations and contracts. Alternate I shall be used for all Emergency Response Cleanup Services (ERCS) contracts, except site specific solicitations and contracts. Alternate II shall be used for all Technical Assistance Team (TAT) contracts. Alternate III shall be used for all Field Investigative Team (FIT) contracts. Alternate IV shall be used for all Environmental Services Assistance Team (ESAT) contracts. Alternate V shall be used for all Technical Enforcement Support (TES) contracts. Alternate VI shall be used for all Superfund headquarters support contracts. The Contracting Officer is authorized to modify paragraph (c) of Alternate VI to reflect any unique limitations applicable to the program requirements. Alternate VII shall be used for all site specific solicitations and contracts.

(4) Clauses for incorporation into contracts existing as of the effective date of this rule shall be negotiated by the EPA Contracting Officer and shall be substantially similar to those set forth in this section.

PART 1510—SPECIFICATIONS, STANDARDS, AND OTHER DESCRIPTIONS

3. Part 1510 is amended by adding section 1510.011-78 to read as follows:

1510.011-78 Annual certification and update of conflict of interest plan.

Contracting Officer shall insert the clause at 1552.210-78 in all Superfund contracts. This clause requires an annual certification that all organizational and personal conflicts of interest have been reported and also requires the contractor to report any changes made in its conflict of interest plan. Certification shall cover the one-year period from the date of contract award for the initial certification, and a one-year period since the previous certification for subsequent certifications. The certification must be received by the Contracting Officer no

later than 45 days after the close of the certification period covered.

PART 1512—CONTRACT DELIVERY OR PERFORMANCE

4. Section 1512.104 is amended by adding a sentence at the end of 1512.104(b) to read as follows:

1512.104 Contract clauses.

b. * * * For Superfund contracts, except for site specific contracts, the Contracting Officer shall use the clause with its Alternate I.

PART 1527—PATENTS, DATA, AND COPYRIGHTS

5. Part 1527 is amended by adding subpart 1527.4 consisting of section 1527.409, to read as follows:

Subpart 1527.4—Rights in Data and Copyrights

1527.409 Solicitation provisions and contract clauses.

The Contracting Officer shall insert the clause in 1552.227-76 in all Superfund contracts. The clause may be used in other contracts if considered necessary by the Contracting Officer.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 1552.209-71 is amended by removing paragraph (d) of the clause; redesignating paragraph (c) of the clause as paragraph (d); on newly redesignated paragraph (d) by removing the words "actual or potential" in the second sentence of the paragraph and adding "actual, apparent or potential" and inserting the word "it" after the word "disclose"; revising paragraph (b) of the clause; and adding new paragraphs (c) and (e) to the clause to read as follows:

1552.209-71 Organizational Conflicts of Interest.

Organizational Conflicts of Interest (XXX 1990)

(b) Prior to commencement of any work, the Contractor agrees to notify the Contracting Officer immediately that, to the best of its knowledge and belief, no actual, apparent or potential conflict of interest exists or to identify to the Contracting Officer any actual, apparent or potential conflict of interest the firm may have. In emergency situations, however, work may begin but notification shall be made within five (5) working days.

(c) The Contractor agrees that if an actual, apparent, or potential organizational conflict

of interest is identified during performance, the Contractor will immediately make a full disclosure in writing to the Contracting Officer. This disclosure shall include a description of actions which the Contractor has taken or proposes to take, after consultation with the Contracting Officer, to avoid, mitigate, or neutralize the actual, apparent or potential conflict of interest. The Contractor shall continue performance until notified by the Contracting Officer of any contrary action to be taken.

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Alternate I to Paragraph (e)

(e) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph (e), unless otherwise authorized by the Contracting Officer.

7. Section 1552.209-73 is added to read as follows: 1552.209-73 *Notification of Conflicts of Interest Regarding Personnel.*

As prescribed in 1509.508(c)(2) insert the following clause:

Notification of Conflicts of Interest Regarding Personnel (XXX 1990)

(a) In addition to the requirements of the contract clause entitled "Organizational Conflicts of Interest," the following provisions with regard to employee personnel performing under this contract shall apply until the earlier of the termination date of the affected employee(s) or the duration of the contract.

(b) The Contractor agrees to immediately notify the EPA Project Officer and the Contracting Officer of any actual, apparent or potential personal conflict of interest with regard to any employee, subcontractor employee, or consultant working on or having access to information regarding this contract. A personal conflict of interest is defined as a relationship of an employee, subcontractor employee, or consultant with an entity that may impair the objectivity of the employee, subcontractor employee, or consultant in performing the contract work.

(c) The Contractor agrees to notify each Project Officer and Contracting Officer prior to incurring costs for that employee's work where an employee may have a personal conflict of interest. In the event that the personal conflict of interest does not become known until after performance on the contract has begun, the Contractor shall immediately notify the Contracting Officer of the personal conflict of interest. The Contractor shall continue performance of this contract until notified by the Contracting Officer of the appropriate action to be taken.

(d) The Contractor agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause.)

8. Section 1552.209-74 is added to read as follows:

1552.209-74 Limitation of Future Contracting.

As prescribed in 1509.508(c)(3), insert the following clause or alternate:

Limitation of Future Contracting (XXX 1990)

(a) Due to the scope and nature of this contract, the prime Contractor shall observe the following restrictions on future hazardous waste site contracting for the duration of the contract.

(1) The Contractor will be ineligible to enter into a contract for remedial action projects for which the Contractor has developed the statement of work or the solicitation package.

(2) The Contractor, during the life of the work assignment and for a period of five (5) years after the completion of the work assignment, agrees not to enter into a contract with or to represent any party with respect to any work relating to CERCLA activities or work that may jeopardize CERCLA enforcement actions, pertaining to a site where the Contractor previously performed work for the EPA under this contract without the prior written approval of the cognizant EPA Contracting Officer.

(b) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(c) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(d) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternate I (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract and for a period of five (5) years after the expiration of the contract, agrees not to enter into a contract with or to represent any party with respect to any work relating to CERCLA activities or work that may jeopardize CERCLA enforcement actions, pertaining to a site where the Contractor previously performed work for the EPA under this contract without the prior written approval of the cognizant EPA Contracting Officer.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team activities (TAT contracts) to EPA within the Contractor's Emergency Response Cleanup Services (ERCS) zone, either as a prime contractor, subcontractor, or consultant.

(2) It will not provide any Technical Assistance Team activities (TAT contracts) to EPA as a prime contractor, subcontractor or consultant at a site where it has performed or plans to perform ERCS work.

(3) It will be ineligible for award of TAT type activities contracts for sites within its respective ERCS zone which result from a CERCLA or RCRA consent decree or court order.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including

well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternate II (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract and for a period of five (5) years after the expiration of the contract, agrees not to enter into a contract with or to represent any party with respect to any work relating to CERCLA activities or that may jeopardize CERCLA enforcement actions, pertaining to a site where the Contractor previously performed work for the EPA under this contract without the prior written approval of the cognizant EPA Contracting Officer.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide to EPA cleanup services (e.g., Emergency Response Cleanup Services (ERCS) contracts) within the Contractor's Technical Assistance Team (TAT) zone, either as a prime Contractor, subcontractor, or consultant.

(2) Unless an individual design for the site has been prepared by a third party, it will not provide to EPA as a prime contractor, subcontractor or consultant any remedial construction services at a site where it has performed or plans to perform TAT work. This clause will not preclude TAT contractors from performing construction management services under other EPA contracts.

(3) It will be ineligible for award of ERCS type activities contracts for sites within its respective TAT zone which result from a CERCLA or RCRA consent decree or court order.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or

confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternate III (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) Except for sites where EPA has made a determination of "no further action", the Contractor, during the life of this contract and for a period of three (3) years after the expiration of the contract, agrees not to enter into a contract with or to represent any party with respect to any work relating to CERCLA activities or that may jeopardize CERCLA enforcement actions, pertaining to a site where the Contractor previously performed work for the EPA under this contract without the prior written approval of the cognizant EPA Contracting Officer.

(d) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(e) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(f) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including

treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternate IV (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(d) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternate V (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) The Contractor will be ineligible to enter into any contract for remedial planning and/or implementation projects for sites within the regions covered by this contract without the prior written approval of the Environmental Protection Agency (EPA) Contracting Officer.

(c) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime

Contractor or subcontractor under an ensuing EPA contract.

(d) The Contractor, during the life of this contract and for a period of seven (7) years after the expiration of the contract, agrees not to enter into a contract with or to represent any party with respect to any work relating to CERCLA activities or that may jeopardize CERCLA enforcement actions, pertaining to a site where the Contractor previously performed work for the EPA under this contract without the prior written approval of the cognizant EPA Contracting Officer.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternative VI (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract, will be ineligible to enter into a contract with EPA to perform response action work (e.g., Alternative Remedial Contracting Strategy (ARCS), Remedial (REM), Field Investigative Team (FIT), Emergency Response Cleanup Services (ERCS), Technical Assistance Team (TAT), and Technical Enforcement Support (TES) contracts).

(d) The Contractor agrees in advance that if any bids/proposals are submitted for any

work that would require written approval of the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(e) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(f) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (f), unless otherwise authorized by the Contracting Officer.

(End of clause.)

Limitation of Future Contracting Alternative VII (XXX 1990)

(a) It is agreed by the parties to this contract that the Contractor will be restricted in its future contracting in the manner described below. Except as specifically provided in this clause, the Contractor shall be free to compete for contracts on an equal basis with other companies.

(b) If the Contractor, under the terms of this contract, or through the performance of work pursuant to this contract, is required to develop specifications or statements of work and such specifications or statements of work are incorporated into an EPA solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime Contractor or subcontractor under an ensuing EPA contract.

(c) The Contractor, during the life of this contract and for a period of five (5) years after the expiration of the contract, agrees not to enter into a contract with or to represent any party with respect to any work relating to CERCLA activities or work that may jeopardize CERCLA enforcement actions, pertaining to the site identified in this contract's statement of work without the prior written approval of the cognizant Contracting Officer.

(d) During the life of this contract, including any options, the Contractor agrees that unless otherwise authorized by the Contracting Officer:

(1) It will not provide any Technical Assistance Team activities (TAT contracts) to EPA on the site either as a prime contractor, subcontractor, or consultant.

(2) It will be ineligible for award of contracts pertaining to this site which result from a CERCLA or RCRA consent decree or court order.

(e) The Contractor agrees in advance that if any bids/proposals are submitted for any work that would require written approval of

the Contracting Officer prior to entering into a contract subject to the restrictions of this clause, then the bids/proposals are submitted at the Contractor's own risk, and no claim shall be made against the Government to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the contract is denied or approved.

(f) To the extent that the work under this contract requires access to proprietary or confidential business or financial data of other companies, and as long as such data remains proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use it to compete with such companies.

(g) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for nondiscretionary technical or engineering services including treatability studies, well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph (g), unless otherwise authorized by the Contracting Officer.

(End of clause.)

9. Section 1552.210-78 is added to read as follows:

1552.210-78 Annual Certification and Update of Conflict of Interest Plan.

As prescribed in 1510.011-78, insert the following clause:

Annual Certification and Update of Conflict of Interest Plan (XXX 1990)

The Contractor shall certify annually that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential conflicts of interest, both personal and organizational, have been reported to the EPA. Such certification must be signed by a senior corporate executive of the company and submitted in accordance with instructions provided by the Contracting Officer. Along with the annual certification, the Contractor shall also submit an update of any changes in the conflict of interest plan submitted with its proposal for this contract. The initial certification shall cover the one-year period from the date of contract award, and all subsequent certifications shall cover successive annual periods thereafter. The certification must be received by the Contracting Officer no later than 45 days after the close of the certification period covered.

(End of clause.)

10. Section 1552.212-71 is amended by adding Alternate I at the end of the section:

1552.212-71 Work Assignments.

* * * * *

Alternate I. As prescribed in 1512.104(b), modify the existing clause by adding the following paragraph (f) to the basic clause:

(f) At the time the Contractor acknowledges receipt of the work assignment, the Contractor must certify that,

to the best of the Contractor's knowledge and belief, all actual, apparent or potential organizational conflicts of interest related to this work assignment have been reported to the Contracting Officer or that no actual, apparent or potential organizational conflicts of interest exist. Upon submission of the work plan, the Contractor must further certify that, to the best of the Contractor's knowledge and belief, all actual, apparent or potential personal conflicts of interest relating to this work assignment have been reported to the Contracting Officer or that no actual, apparent or potential personal conflicts of interest exist.

(End of clause.)

11. Section 1552.227-76 is added to read as follows:

1552.227-76 Project Employee Confidentiality Agreement.

As prescribed in 1527.409, insert the following clause:

Project employee Confidentiality Agreement (XXX 1990)

(a) The Contractor recognizes that Contractor employees in performing this contract may have access to data, either

provided by the Government or first generated during contract performance, of a sensitive nature which should not be released to the public without Environmental Protection Agency (EPA) approval. Therefore, the Contractor agrees to obtain confidentiality agreements from all employees working on requirements under this contract including subcontractors and consultants.

(b) Such agreements shall contain provisions which stipulate that each employee agrees that the employee will not disclose, either in whole or in part, to any entity external to EPA, the Department of Justice, or the Contractor, any information or data (as defined in FAR 27.401) provided by the Government or first generated by the Contractor under this contract, any site-specific cost information, or any enforcement strategy without first obtaining the written permission of the EPA Contracting Officer. If a contractor, through an employee or otherwise, is subpoenaed to testify or produce documents, which could result in such disclosure, the contractor must provide immediate advance notification to the EPA so that the EPA can authorize such disclosure or have the opportunity to take action to prevent such disclosure. Such agreements shall be

effective for the life of the contract and for a period of five (5) years after completion of the contract.

(c) The EPA may terminate this contract for convenience, in whole or in part, if it deems such termination necessary to prevent the unauthorized disclosure of information to outside entities. If such a disclosure occurs without the written permission of the EPA Contracting Officer, the Government may terminate the contract, for default or convenience, or pursue other remedies as may be permitted by law or this contract.

(d) The Contractor further agrees to insert in any subcontract or consultant agreement placed hereunder, except for subcontracts or consultant agreements for well drilling, fence erecting, plumbing, utility hookups, security guard services, or electrical services, provisions which shall conform substantially to the language of this clause, including this paragraph, unless otherwise authorized by the Contracting Officer.

(End of clause.)

Dated: April 12, 1990.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 90-9580 Filed 4-24-90; 8:45 am]

BILLING CODE 8560-50-M

Thursday
April 26, 1990

Test Report

Part IV

Environmental Protection Agency

48 CFR Parts 1510 and 1552
Acquisition Regulation Concerning
Information Resources Management;
Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3758-6]

48 CFR Parts 1510 and 1552

Acquisition Regulation Concerning Information Resources Management

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes a rule to establish Environmental Protection Agency Acquisition Regulation (EPAAR) coverage on EPA policies for Information Resources Management (IRM). The proposed rule incorporates EPA IRM policies into a contract clause. The intended effect of this proposed rule is to assure that contractors perform IRM related work in accordance with EPA policies.

DATES: Written comments should be submitted not later than May 29, 1990.

ADDRESSES: Comments should be addressed to: Environmental Protection Agency, Procurement and Contracts Management Division (PM-214F), 401 M Street, SW., Washington, DC 20460, Attn: Edward N. Chambers.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers, Telephone: (202) 382-5028.

SUPPLEMENTARY INFORMATION:

A. Background

The Environmental Protection Agency (EPA) Information Resources Management (IRM) policies set forth requirements for the performance of IRM related work. IRM is a comprehensive program for the management of EPA information resources to assure their efficient utilization. IRM policies apply to both EPA and contractor performed IRM efforts. It is necessary that contractors comply with IRM policies to assure the effectiveness of the IRM program. This rule provides for the incorporation of all EPA IRM policies into all Agency contracts on a prospective basis.

B. Executive Order 12291

Office of Management and Budget (OMB) Bulletin No. 85-7, dated December 14, 1984, establishes the requirements for OMB review of agency acquisition regulations. This regulation does not fall within any of the categories cited in the Bulletin requiring review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection

requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The proposed rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

The EPA IRM policies set forth procedures for the management of information resources. These procedures are commonly accepted practices in the information management community, for both small and large entities. Compliance with these conventional procedures will require minimal cost or effort for any entity, large or small.

List of Subjects in 48 CFR Parts 1510 and 1552

Contract clauses, Government procurement, Purchase descriptions, Solicitation provisions, Specifications, Standards.

For reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is proposed to be amended as set forth below:

1. The authority citation for 48 CFR parts 1510 and 1552 continues to read as follows:

Authority: Section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1510—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

2. Part 1510 is amended to add sections 1510.001, 1510.002, 1510.002-70, and 1510.011-78 to read as follows:

1510.001 Definitions.

Information resources management (IRM) means any planning, budgeting, organizing, directing, training, promoting, controlling, and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both the information itself, and the management of information and related resources such as personnel, equipment, funds, and technology.

1510.002 Policy.

Contractor compliance with EPA IRM policies is necessary for the efficient management of information and technology used to support EPA's mission. These policies provide the structure for the Agency's IRM program.

1510.011-78 Information Resources Management.

The Contracting Officer shall insert the clause at 1552.210-78, Compliance with EPA Policies for Information

Resources Management, into all solicitations and contracts.

PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Part 1552 is amended to add section 1552.210-78 to read as follows:

1552.210-78 Compliance with EPA Policies and Information Resources Management.

As prescribed in 1510.011-78, insert the following clause:

Compliance With EPA Policies for Information Resources Management (XX-1990)

(a) *Definition.* Information Resources Management (IRM) is defined as any planning, budgeting, organizing, directing, training, promoting, controlling and managing activities associated with the burden, collection, creation, use and dissemination of information. IRM includes both information itself, and the management of information and related resources such as personnel, equipment, funds, and technology. Examples of these services include but are not limited to the following:

(1) The acquisition, creation, or modification of a computer program or automated data base for delivery to EPA or use by EPA or contractors operating EPA programs.

(2) The analysis of requirements for, study of the feasibility of, evaluation of alternatives for, or design and development of a computer program or automated data base for use by EPA or contractors operating EPA programs.

(3) Services that provide EPA personnel access to or use of computer or word processing equipment, software, or related services.

(4) Services that provide EPA personnel access to or use of: data communications; electronic messaging services or capabilities; electronic bulletin boards, or other forms of electronic information dissemination; electronic record-keeping; or any other automated information services.

(5) Services that are subject to the Brooks Act of 1965, as amended (P.L. 89-306).

(b) *General.* The contractor shall perform any IRM related work under this contract in accordance with the IRM policies set forth in this clause.

(c) *IRM Policies.* The EPA policies for IRM are set forth in the following Directives:

(1) *Agency Directives.*

- 2100 Information Resources Management Policy Manual; 1987 Manual; 1987 (EPA/IRM-87/2100).
- 2115 Guide for ADP Reviews; 1984 (EPA/IRM-84/2115).
- 2160 Records Management Manual; 1984 (EPA/IRM-84/2160).
- 2190 Privacy Act Manual; 1986 (EPA/IRM-86/2190).
- 2180.1 EPA Order—*Chemical Abstract Services Registry Number Data Standard*; 6/26/87 (EPA/IRM-87/21801).
- 2180.2 EPA Order—*Data Standards for the Electronic Transmission of Laboratory Measurement Results*; 12/10/87 (EPA/IRM-87/21802).
- (2) *Office of Information Resources Management Directives*.
- 88-01 Geographic Information Systems (GIS) Guidelines Document; 1/88 (EPA/IRM-88/8801).
- 88-03 Interagency Agreement (IAG) Guidelines on Use of National

- Computer Center (NCC) Licensed Software; 11/28/88 (EPA/IRM-88/8803).
- 89-01 Local Area Networks (LANs) of Personal Computers Policy Directive; 3/89 (EPA/IRM-89/8901).
- EPA System Design and Development Guidance; 6/89.
- (3) *National Data Processing Division (NDPD) Directives*.
- NDPD Operational Policies Manual; 10/88 (EPA/IRM-88/500).
- NCC-IBM User's Guide; 1/88 (EPA/IRM-88/501).
- NCC-VAX User's Guide; 2/88 (EPA/IRM-88/502).
- Local Area Networks (LAN) Technical Guidelines; 1/88 (EPA/IRM-88/503).
- (d) *EPA IRM Policy Documents*.
- Information on how to obtain copies of the documents in paragraph (c) of this clause may be obtained by written request to: U.S. Environmental Protection Agency, Office of Information

Resources Management, Information Management and Services Division, Mail Code: PM-211D, 401 M Street, SW., Washington, DC 20460.

(e) *Additional IRM Directives*. Attachment(s) to this contract may include revised directives and directives otherwise not referenced in paragraph (c). Compliance with these directives is as required under paragraph (b).

(f) *Change Orders*. In accordance with the Changes clause, the Contracting Officer may revise, delete, or add IRM directives. Any adjustment to this contract arising from such a change shall be in accordance with the procedures for an equitable adjustment under the Changes clause.

Dated: April 10, 1990.

John C. Chamberlin,
Director, Office of Administration.
[FR Doc. 90-9579 Filed 4-25-90; 8:45 am]
BILLING CODE 6560-50-M

Resources Management Information
Management and Service Division
Mail Code: F-2110, 405 M Street, S.W.
Washington, D.C. 20540

(c) Additional Information
Attached to the contract may
include revised drawings and other
information not reflected in the
contract. Compliance with these drawings is
as required under paragraph (b).

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Thursday,
April 26, 1990

Proposed

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Airport Radar Service Area (ARSA) Communication Requirement, Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91****[Docket No. 26212; Amdt. No. 91-215]****RIN 2120-AC89****Airport Radar Service Area (ARSA)
Communication Requirement****AGENCY:** Federal Aviation
Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This rule clarifies the regulation dealing with the two-way radio communication requirement for operations in an ARSA. Pilots will be able to identify which ATC facilities they are required to contact for entry into an ARSA. This rule will ensure that the correct air traffic control facility is aware of all aircraft operating in an ARSA and will tend to reduce the potential for traffic conflicts.

EFFECTIVE DATE: The amendments to § 91.88 are effective May 29, 1990. The amendments to § 91.130 are effective August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Steenson, Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Availability of Document**

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of the document.

Part 91 will be completely revised as of August 18, 1990. All the sections will be renumbered. Section 91.88 will be renumbered as § 91.130. Hereafter in this preamble, references to the renumbered part 91 will be shown in brackets.

Need for Rulemaking

In pertinent part, § 91.88 [§ 91.130], Airport Radar Service Areas (ARSA), requires the pilot of an aircraft to establish and maintain two-way radio communication with air traffic control (ATC) when operating in an ARSA. The intent of this regulation is twofold. First, the pilot of an aircraft planning to enter

an ARSA is expected to contact the ATC facility having jurisdiction over the ARSA. Second, for an aircraft operation to, on, or from a satellite airport with an operating control tower in the ARSA, a pilot is expected to establish and maintain two-way radio communication with that control tower. In most situations, pilots are complying with the intent of the regulation and are contacting the correct ATC facility when an ARSA entry is involved. However, there have been incidents reported where an aircraft was actually in an ARSA but the pilot of that aircraft was in radio communication with an ATC facility not associated with the ARSA. The controller at the ATC facility that was in contact with the aircraft was not aware that the aircraft was operating in the ARSA. Additionally, the controller providing ATC services and separation to aircraft in the ARSA was unaware of the presence of the aircraft.

Under part 1 of the Federal Aviation Regulations (FAR), "ATC" means a service operated by appropriate authority to promote the safe, orderly, and expeditious flow of air traffic. A person technically could assume that the § 91.88 [§ 91.130] communication requirement is met when two-way radio communication is established and maintained with any nearby ATC facility including air traffic control towers, approach control facilities, air route traffic control centers, or flight service stations. While an accident has not yet resulted from the incidents precipitated by such an interpretation, the potential for one to occur increases as long as a misunderstanding is possible.

The intent of the ARSA two-way radio communication requirement contained in § 91.88 [§ 91.130] is evident from the preamble to the rule that established the requirement (50 FR 9252; February 27, 1985). Specifically, under the caption "The Amendment", the plain-language explanation of the rule stated that:

Aircraft arriving at any airport in an ARSA, and overflying aircraft, prior to entering the ARSA must: (1) Establish two-way radio communication with the ATC facility having jurisdiction over the area; and, (2) while in the ARSA, maintain two-way radio communication with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communication must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport or heliport within the ARSA, two-way communication must be established and thereafter maintained while operating within the ARSA with the ATC facility having jurisdiction over the area.

In spite of educational efforts by the FAA through pilot forums, briefings, and other contacts to promote understanding of the intent of the rule, there continue to be incidents and discussions related to the communication provisions of the rule. Therefore, the FAA is amending the rule so that it clearly specifies the ATC facility with which a pilot is required to establish and maintain two-way radio communication when conducting operations associated with an ARSA. This amendment does not alter the existing ARSA communication requirement. However, to the extent the amendment eliminates confusion about what the rule requires, it should: (1) Ensure that the appropriate controller is aware of all the aircraft operating in the area over which that controller has jurisdiction; and (2) reduce the potential for traffic conflicts in ARSA airspace.

Conclusion

For the above reasons the FAA has determined that this action is not a major rule under Executive Order 12291; is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation because there will be no impact on users of the system.

This action is an interpretation and clarification of an existing rule and does not place any new restrictions or requirements on the public. Accordingly, I find that this interpretive rule is excepted from the general notice and comment requirements pursuant to 5 U.S.C. 553(b).

Federalism Implications

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

List of Subjects in 14 CFR Part 91

Aviation safety, Safety aircraft, Air traffic control, Pilots, Airspace, Air transportation, and Airports.

The Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 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).

The following amendments are made to part 91 in effect as of the effective date of this amendment:

§ 91.88 [Amended]

2. Section 91.88(c) is amended by replacing the words "with ATC" with the words "with the ATC facility having jurisdiction over the airport radar service area."

3. Section 91.88(d) is revised to read as follows:

* * * * *

(d) Departures. No person may operate an aircraft within an airport radar service area except as follows:

(1) From the primary airport or satellite airport with an operating control tower, unless two-way radio communication is established and maintained with the control tower in

accordance with § 91.87 of this part, and thereafter as instructed by ATC while operating in the airport radar service area.

(2) From a satellite airport without an operating control tower, unless two-way radio communication is established as soon as practicable after departing and thereafter maintained with the ATC facility having jurisdiction over the airport radar service area.

* * * * *

4. Section 91.88(f) is amended by replacing the words "by ATC" with the words "by the ATC facility having jurisdiction over the airport radar service area."

The following amendments are made to part 91 as it will be renumbered and revised on August 18, 1990:

§ 91.130 [Amended]

5. Section 91.130(c) is amended by replacing the words "with ATC" with the words "with the ATC facility having jurisdiction over the airport radar service area."

6. Section 91.130(d) is revised to read as follows:

* * * * *

(d) Departures. No person may operate an aircraft within an airport radar service area except as follows:

(1) From the primary airport or satellite airport with an operating control tower, unless two-way radio communication is established and maintained with the control tower in accordance with § 91.87 of this part, and thereafter as instructed by ATC while operating in the airport radar service area.

(2) From a satellite airport without an operating control tower, unless two-way radio communication is established as soon as practicable after departing and thereafter maintained with the ATC facility having jurisdiction over the airport radar service area.

* * * * *

7. Section 91.130(f) is amended by replacing the words "by ATC" with the words "by the ATC facility having jurisdiction over the airport radar service area."

Issued in Washington, DC on April 20, 1990.

James B. Busey,
Administrator.

[FR Doc. 90-9658 Filed 4-25-90; 8:45 am]

BILLING CODE 4910-13-M

Thursday
April 26, 1990

Part VI

Department of Agriculture

Cooperative State Research Service

Competitive Research Grants Program for Fiscal Year 1990; Amendment to the Solicitation of Applications; Monitoring Systems for Ultraviolet; Notice

Federal Register

DEPARTMENT OF AGRICULTURE**Cooperative State Research Service****Competitive Research Grants Program for Fiscal Year 1990; Amendment to the Solicitation of Applications for the Competitive Research Grants Program; Monitoring Systems for Ultraviolet**

Notice is hereby given that the Notice of the Competitive Research Grants Program for Fiscal Year 1990; Solicitation of Applications for the Competitive Research Grants Program, found at 54 FR 47066-47070 (November 8, 1989) and amended at 55 FR 1778-1780 (January 18, 1990) is further amended by the addition of a new specific program area to address Monitoring Systems for Ultraviolet (UV-B). The Solicitation found at 54 FR 47066-47070, as amended at 55 FR 1778-1780, remains unchanged with regard to other program areas described therein.

The authority for the Competitive Research Grants Program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this Program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture (USDA). Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

The total amount available in fiscal year 1990 for grant awards in the research program area of monitoring systems for ultraviolet is approximately \$100,000.

Applicable Regulations

This program is subject to the provisions found at 7 CFR part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985). These provisions set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015, as amended, and the Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace

(Grants), 7 CFR part 3017, apply to this program.

Additional Specific Research Area to be Supported in Fiscal Year 1990

In addition to research on fundamental processes involved in UV-B radiation, which is provided for in the original solicitation, there is a need for research relating to the development of the most dependable monitoring technology to measure ground level UV-B, to establish a model intensive monitoring research site using the most reliable instrumentation available, and then to establish three additional monitoring sites in strategic areas listed below. These additional sites will establish the protocol for an extended monitoring system to be developed in the future. The accurate measurements of UV-B in different geographical areas is essential for the proper interpretation of results obtained in basic research related to UV-B.

The following specific research area (program area) and guidelines are provided as a base from which proposals may be developed:

15.0 UV-B Monitoring Research

The Program area includes the following elements: (a) Establishment of three initial UV-B monitoring sites representing a distinct range in climate (e.g., an urban area, a high altitude area, an extreme latitude area). This research effort should include standardization of monitoring methods at all sites, studies of interactions of various factors that affect the level of UV-B to be monitored at the ground level, as a basis for the development of a computer-based monitoring network that can develop into a coordinated management of data collected at different sites; (b) Development of standard reference spectroradiometers that can act as reference devices for the UV-B monitoring activities; (c) Development of a spectroradiometer that can be used in routine field studies as a field calibration/audit device and as a routine monitoring instrument. Potential applicants are encouraged to develop proposals that combine more than one of these elements. Potential applicants also are encouraged to develop proposals that offer new or unusual approaches to accomplish the overall goal of the program.

This program area can be addressed by a single institution or multiple institutions with the proper competence and facilities to accomplish the objectives.

How to Obtain Application Materials

Copies of this solicitation, the Grant Application Kit, and the Administrative Provisions governing this program, 7 CFR part 3200 (49 FR 5570, February 13, 1984, as amended), may be requested from: Proposal Services Branch; Awards Management Division; Office of Grants and Program Systems; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Building, Washington, DC 20250-2200; telephone number (202) 475-5048.

What to Submit

An original and 14 copies of each proposal are required under this program. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made. Each copy of each proposal must include a Form CSRS-661, "Grant Application," which is included in the Grant Application Kit. Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative.

Each project description is expected by the members of review panels and the CSRS staff to be complete itself. It should be noted that reviewers are not required to read beyond 15 pages of the project description to evaluate the proposal. Vitae of key project personnel should be limited to three (3) pages each.

Please note the following section taken from the FY 1990 Rural Development, Agriculture, and Related Agencies Appropriations Act of November 21, 1989 (Pub. L. No. 101-161) that applies to this program.

Sec. 639. None of the funds in this Act shall be available to pay indirect costs on research grants awarded competitively by the Cooperative State Research Service that exceed 25 per centum of total direct costs under each award.

Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the instructions found in 7 CFR part 3200.

Excessive numbers of co-principal investigators and collaborators create conflict-of-interest problems during the review and award processes. Proposals with multiple co-principal investigators and collaborators beyond those required for genuine multi-disciplinary studies are strongly discouraged.

All copies of a proposal must be mailed in one package because applications submitted in several packages are difficult to identify. Each copy of each proposal should be stapled securely in the upper left-hand corner. Do not bind. Information should be typed on one side of the page only.

Where and When to Submit Grant Applications

Each research grant application must be submitted to: Proposal Services Branch, Awards Management Division; Office of Grants and Program Systems; Cooperative State Research Service; U.S. Department of Agriculture; room 303, Aerospace Building; Washington, DC 20250-2200.

Please Note: Hand delivered proposals should be brought to room

303, Aerospace Building, 901 D Street, SW., Washington, DC 20024.

To be considered for funding during fiscal year 1990, UV-B Monitoring Research *proposals must be postmarked by June 25, 1990.*

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7, and the applicable program area should be indicated in Block 8, Form CSRS-661, provided in the Grant Application Kit.

Supplementary Information

The competitive research grants program is listed in the Catalog of Federal Domestic Assistance under No. 10.206. For reasons set forth in the final rule-related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983),

this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this notice has been approved under OMB Document No. 0524-0022.

Done at Washington, DC, this 18th day of April, 1990.

William D. Carlson,

Associate Administrator, Office of Grants and Program Systems, Cooperative State Research Service.

[FR Doc. 90-9700 Filed 4-25-90; 8:45 a.m.]

BILLING CODE 3410-22-M

Thursday
April 26, 1990

Part VII

The President

**Proclamation 6120—Restoring the
Country Allocation to Nicaragua for
Quotas on Certain Sugars, Syrups and
Molasses**

Presidential Documents

Title 3—**The President****Proclamation 6120 of April 25, 1990****Restoring the Country Allocation To Nicaragua For Quotas on Certain Sugars, Syrups and Molasses****By the President of the United States of America****A Proclamation**

1. Additional U.S. note 2 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), enacted by section 1204(a) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. No. 100-418, 19 U.S.C. 3004(a)), provides in relevant part as follows:

"2. The rates in column numbered 1 in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40 and 2106.90.10, on January 1, 1968, shall be effective only during such time as title II of the Sugar Act of 1948 or substantially equivalent legislation is in effect in the United States, whether or not the quotas, or any of them, authorized by such legislation, are being applied or are suspended: *Provided,*"

"(a) That if the President finds that a particular rate not lower than such January 1, 1968, rate, limited by a particular quota, may be established for any articles provided for in the above-mentioned subheadings, which will give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade, he shall proclaim such particular rate and such quota limitation, . . ."

"(b) That any rate and quota limitation so established shall be modified if the President finds and proclaims that such modification is required or appropriate to give effect to the above considerations; . . ."

Previously, Proclamation No. 3822 of December 16, 1967 (82 Stat. 1455), had added almost identical provisions to the former Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) in order to carry out a provision in the trade agreement known as the Geneva (1967) Protocol of the General Agreement on Tariffs and Trade (GATT) (Note 1 of Unit A, Chapter 10, Part I of Schedule XX; 19 U.S.T., Part II, 1282).

2. The Sugar Act of 1948 expired on December 31, 1974, and it has not been replaced with substantially equivalent legislation. Proclamation No. 4334 of November 16, 1974 (39 FR 40739), established rates of duty, and an absolute import quota, for such sugars, sirups and molasses, to become effective on January 1, 1975. Proclamation No. 4334 further proclaimed such quantitative limitations in the form of headnote 3 to subpart A, part 10, schedule 1 of the TSUS. Subsequent proclamations have modified such rates of duty and quota limitations. The provisions of headnote 3 to subpart A, part 10, schedule 1 of the TSUS are now set forth in additional U.S. note 3 to chapter 17 of the HTS.

3. By Proclamation No. 4941 of May 5, 1982 (47 FR 19661), the President modified the quantitative limitations on the importation of certain sugars, sirups and molasses established in headnote 3 to subpart A, part 10, schedule 1 of the TSUS, in conformity with headnote 2 to the same subpart, and provided for a country-by-country allocation of the total quota quantity established thereunder. The share allocated to Nicaragua was 2.1 percent of the total base quota, which generally corresponded to its average share of imports into the United States during the period from 1975 through 1981.

excluding the years in which the largest and smallest volumes of imports were recorded.

4. By Proclamation No. 5104 of September 23, 1983 (48 FR 44057), Nicaragua's share of the total base quota amount was reduced to 6,000 short tons for each quota period. The quantity removed from Nicaragua's allocation was redistributed to Honduras, El Salvador and Costa Rica. Proclamation No. 5104 added, at the end of paragraph (c)(i) of headnote 3, a new Note 2 that, as incorporated in the HTS, now provides as follows:

"NOTE 2: Beginning with the quota year beginning September 26, 1983, the quota allocations for Nicaragua, Costa Rica, El Salvador and Honduras will be as follows:

Nicaragua—5,443 metric tons, raw value;

El Salvador—2.6 percent of the total base quota amount permitted to be imported under paragraphs (a) and (b) of this headnote plus 18 percent of the difference between 2.1 percent of the total base quota amount and 5,443 metric tons, raw value;

Honduras—1 percent of the total base quota amount plus 52 percent of the difference between 2.1 percent of the total base quota amount and 5,443 metric tons, raw value;

Costa Rica—1.5 percent of the total base quota amount plus 30 percent of the difference between 2.1 percent of the total base quota amount and 5,443 metric tons, raw value."

5. On March 13, 1984, the GATT Council adopted a panel report that found that the reduction in the allocation to Nicaragua was inconsistent with the obligations of the United States under the GATT. The Council recommended that the United States allocate to Nicaragua a sugar import quota consistent with the criteria set forth in Article XIII:2 of the GATT. On May 1, 1985, the President imposed an embargo on trade with Nicaragua, by Executive Order No. 12513 (50 FR 18629), under the authority of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and the National Emergencies Act, 50 U.S.C. 1601 *et seq.* I terminated this embargo by Executive Order No. 12707 of March 13, 1990 (55 FR 9707).

6. I find that the modifications of the quantitative limitations that are hereinafter proclaimed give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the GATT, and are consistent with the provisions of section 1204(c)(2) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3004(c)(2)).

7. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other Acts affecting import treatment, and actions taken thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and statutes of the United States, including but not limited to additional U.S. note 2 to chapter 17 of the HTS, do hereby proclaim that:

(1) Note 2 at the end of paragraph (c)(i) of additional U.S. note 3 to chapter 17 of the HTS is deleted from the HTS, effective as to sugars, syrups or molasses entered, or withdrawn from warehouse for consumption, on or after the date of signature of this proclamation.

(2) Notwithstanding paragraph (1), the quantities of sugars, syrups and molasses allocated to Costa Rica, El Salvador and Honduras during the current quota period shall not be less than 49,758.5 metric tons, raw value, 71,034.1 metric tons, raw value, and 47,490.4 metric tons, raw value, respectively.

(3) Proclamation No. 5104 of September 23, 1983, is hereby terminated.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of April, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George H. W. Bush

[FR Doc. 90-9940

Filed 4-25-90; 11:23 am]

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