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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: January 30, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AB88

Federal Employees Health Benefits Program; Discontinued Plan and Split-award Enrollments

AGENCY: Office of Personnel Management.

ACTION: Final regulations with opportunity for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations concerning the Federal Employees Health Benefits (FEHB) Program. The final regulations: (1) Expand the belated opportunity provision so that any enrollee will be permitted to make an enrollment change when a health benefits plan is discontinued at the end of the contract period, and (2) allow surviving family members more than one enrollment in "split-award" cases (i.e., when the family members receive separate annuity payments). These revisions do not introduce new policy but merely recognize and formally authorize existing policy and practice. The sole purpose of these revisions is to assure that individual enrollees are guaranteed continuing, uninterrupted health benefits enrollment and coverage. In the past, OPM has used administrative discretion to prevent loss or interruption of enrollment and coverage in these circumstances.

DATES: *Effective Date:* December 31, 1989.

Comment Date: Comments due on or before March 20, 1990.

ADDRESSES: Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, room 4351, 1900 E. Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bill Smith, (202) 632-4634, ext. 207.

SUPPLEMENTARY INFORMATION: Section 890.301(k) of the FEHB regulations now provides that changes in enrollment must be made during an open season when a plan is discontinued at the end of a contract period. Section 890.301(b) of the regulations provides a belated open season enrollment change opportunity for employees only. If these two regulatory provisions were strictly enforced, the result would be an unintended loss of coverage for some enrollees, especially annuitants. That is, for a variety of legitimate reasons, the enrollee might miss out on the opportunity to submit a timely open season enrollment change. For example, an annuitant might not receive the information about the plan discontinuance, or might receive it after the open season enrollment period ends. In the past, OPM has used administrative discretion to prevent loss or interruption of enrollment and coverage in these circumstances. These regulations affirm OPM's current practice of permitting belated open season changes in such instances.

The second revision amends § 890.303(c) of the regulations, which currently provides that any eligible survivor(s) previously covered as the family member(s) of a deceased employee or annuitant is allowed to continue one FEHB enrollment in the former employee's (or annuitant's) stead.

While this basic principle of one enrollment per family meets the health care needs of the overwhelming majority of enrollees, there are some unique cases in which survivor benefits are split among individuals of separate households. This happens, for example, where an annuitant is survived by children of different spouses who belong to separate family units. In these cases, a single FEHB enrollment does not cover all eligible survivors. Therefore, out of prudence, our practice has been to allow multiple enrollments in lieu of a one family enrollment in such rare situations. The regulation is being revised to acknowledge this current practice.

Waiver of Notice of Proposed Rulemaking

Pursuant to sections 553(b)(3)(B) and 553(d)(3) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking and the prospective effective date of these revisions. The notice is being waived to assure that enrollees, particularly those affected by plan discontinuations at the end of 1989, have continued uninterrupted enrollment and coverage. Delaying the date of implementation of these regulations would be contrary to the public interest and would serve no useful purpose.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Accordingly, OPM is amending 5 CFR part 890 as follows:

1. The authority citation for part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; sec. 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100-654; sec. 890.303 also issued under sec. 303 of Pub. L. 99-569, 100 Stat. 3190, sec. 188 of Pub. L. 100-204, 101 Stat. 1331, and sec. 204 of Pub. L. 100-238, 101 Stat. 1744; subparts J and K also issued under titles I and II, respectively of Pub. L. 100-654.

2. In § 890.301, paragraph (b) is revised to read as follows:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(b) *Belated registration.* When an employing office determines that (1) an employee was unable, for cause beyond

his or her control, to register to be enrolled or (2) an enrollee was unable, for cause beyond his or her control, to change enrollment within the time limits prescribed by this section, that office must accept his or her registration within 31 days after it advises him or her of that determination.

* * * * *

3. In § 890.303, paragraph (c) is revised to read as follows:

§ 890.303 Continuation of enrollment.

* * * * *

(c) *On death.* The enrollment of a deceased employee or annuitant who is enrolled for self and family (as opposed to self only) is transferred automatically to his or her eligible survivor annuitants. The enrollment is considered to be that of (1) the survivor annuitant from whose annuity all or the greatest portion of the withholding for health benefits is made or (2) the surviving spouse entitled to a basic employee death benefit. The enrollment covers members of the family of the deceased employee or annuitant. In those instances in which the annuity is split among surviving family members, multiple enrollments are allowed. A remarried spouse is not a member of the family of the deceased employee or annuitant unless annuity under section 8341 or 8442 of title 5, United States Code, continues after remarriage.

* * * * *

[FR Doc. 90-1197 Filed 1-18-90; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 32; Doc. No. 7636S]

General Crop Insurance Regulations; Fresh Market Tomato (Dollar Plan) Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on tomatoes in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: February 20, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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 action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring tomatoes.

Upon publication of 7 CFR 401.139 as a final rule, the provisions for insuring tomatoes contained therein will supersede those provisions contained in 7 CFR part 444, the Fresh Market Tomato Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 444 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 444 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Fresh Market Tomato (Dollar Plan) Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring tomatoes as follows:

1. Section 2—Add a provision to exclude losses due to failure to market the tomatoes unless the failure to market the tomatoes is due to physical damage from an insured cause.

2. Section 3—State guarantees are now included in the endorsement.

3. Section 7—Add unit division provisions in the endorsement with language providing that production evidence must be maintained and be made available to us.

4. Section 9—Change the language regarding the value of appraised production to count of tomatoes remaining after the second or third harvest to be the production in excess of 30 cartons.

Change the value of appraised production to count for ground culture tomatoes to be the value remaining after the second harvest rather than after the third harvest as is the case with staked tomatoes.

5. Section 13—Change the classification size of mature green and ripe tomato to 6 x 7 (2$^{8}/_{32}$-inch minimum diameter).

Revise the definition of "Acre," "Freeze," "Frost," and, "Tropical Cyclone" to clarify their meaning.

Recently, FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for tomatoes, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

On Friday, October 6, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 41246, to add a new section, 7 CFR § 401.139, the Fresh Market Tomato (Dollar Plan) Endorsement to provide the provisions of crop insurance

protection on tomatoes in an endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 41246 is hereby adopted as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance; fresh market tomato (dollar plan) endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.139, Fresh Market Tomato (Dollar Plan) Endorsement, effective for the 1991 and Succeeding Crop Years, to read as follows:

§ 401.139 Fresh Market Tomato (Dollar Plan) Endorsement.

The provisions of the Fresh Market Tomato Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Fresh Market Tomato (Dollar Plan) Endorsement

1. *Insured Crop.*

a. The crop insured will be tomatoes (excluding plum and cherry-type tomatoes) planted for harvest as fresh market tomatoes.

b. In lieu of section 2.e.(11) of the general policy, we will insure newly cleared land planted to tomatoes.

c. In addition to the fresh tomatoes not insurable under section 2 of the general crop insurance policy we do not insure any acreage grown by any entity if that entity had not previously:

(1) Grown tomatoes for commercial sale; or

(2) Participated in the management of the tomato farming operation.

d. We do not insure any acreage of tomatoes:

(1) Grown for direct consumer marketing;

(2) Which is not irrigated;

(3) Which is not grown on plastic mulch unless allowed for by the actuarial table;

(4) On which tomatoes, peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly prepared before planting tomatoes;

(5) Which was planted to tomatoes the preceding planting period, unless the tomato plants of the preceding planting period were destroyed prior to reaching stage 2 production as defined in section 3 of this endorsement.

2. *Causes of Loss.*

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;

(2) Frost;

(3) Freeze;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Wind or excess precipitation occurring in conjunction with a cyclone; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss specified in section 1 of the general policy as not insured, we will not insure against any loss of production due to:

(1) Disease or insect infestation; or

(2) Failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

3. *Insurance Guarantees.*

a. The insurance guarantees per acre are by stages and increase at specified intervals, up to the final stage guarantee. The stages and guarantees are as follows:

(1) First stage is from planting until qualifying for stage 2. The first stage guarantee is 50 percent of the final stage guarantee.

(2) Second stage is 60 days (30 days for transplants) after planting, and until qualifying for stage 3. The second stage guarantee is 75 percent of the final stage guarantee.

(3) The third stage is 90 days (60 days for transplants) after planting until qualifying for the final stage. The third stage guarantee is 90 percent of the final stage guarantee.

(4) The final stage begins the earlier of 105 days (75 days for transplants) after planting, or the beginning of harvest.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The insurance guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

4. *Report of Acreage, Share, and Practice.*

In addition to the information required in section 3 of the general crop insurance policy, you must report the row width. You must report on or before the acreage reporting date for each planting period all the acreage of fall, winter, and spring-planted tomatoes as applicable in the county in which you have a share.

5. *Annual Premium.*

The amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times your share at the time of each planting, times any applicable premium adjustment percentage for which you may qualify (as shown in the actuarial table), because you have not selected optional units.

6. *Insurance Period.*

In lieu of section 7 of the general crop insurance policy, insurance attaches on each unit when the tomatoes are planted in each planting period and ends at the earliest of:

a. Total destruction of the tomatoes on the unit;

b. Discontinuance of harvest of tomatoes on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 140 days after the date of direct seeding, transplanting, or replanting;

e. Final harvest; or

f. Final adjustment of a loss.

7. *Unit Division.*

In addition to units defined in section 17 of the general crop insurance policy, insurable tomato acreage will contain units by planting period. Insurable tomato acreage which otherwise would be one unit as provided above, may be divided into two or more optional units. Written, verifiable records of planted and harvested acreage and production for each optional unit must be provided to us at our request. For optional unit division, acreage planted to the insured tomatoes must be located in separate, legally identifiable sections or, in the absence of section descriptions, on land identified by separate ASCS Farm Serial Numbers, provided:

a. The boundaries of the section or farms designated by ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The tomatoes are planted in such a manner that the planting pattern does not continue into an adjacent section or farm designated by ASCS Farm Serial Number.

If you have a loss on any unit, preharvest appraisals for that loss unit and production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units may cause those units to be combined. If your tomato acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

8. *Notice of Damage or Loss.*

a. If a loss is anticipated by you on any unit within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(4) 140 days after the direct seeding, transplanting, or replanting of the tomatoes (see section 6).

b. You must not destroy any tomato acreage within a unit until inspected by us if an indemnity is to be claimed or the unit.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. *Claim for Indemnity.*

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance, times the percentage for the stage of production defined in section 3;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.b.); and

(3) Multiplying this result by your share.

b. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes harvested in the unit by $3.00; or

(b) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable cost set by the actuarial table (however, such price must not be less than zero for any carton).

(2) The value of appraised production to be counted will include:

(a) The value of the potential production (see subsection 13.k.) on tomato acreage that has not been harvested the second time for ground-cultured tomatoes (the third time for staked tomatoes);

(b) The value of unharvested potential production in excess of 30 cartons after the second harvest for ground culture tomatoes (third harvest for staked tomatoes);

(c) The value of the potential production lost due to uninsured causes; and

(d) An amount not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

c. A replanting payment is available under this endorsement. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand. The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $175.00 per acre by your share.

10. *Cancellation and Termination Date.*

The cancellation and termination date is July 31.

11. *Contract Changes.*

All contract changes will be available at your service office by April 30 preceding the cancellation date.

12. *Production Reporting Dates.*

The production reporting provision found in section 4 of the general crop insurance policy does not apply to this contract.

13. *Meaning of Terms.*

For the purpose of tomato crop insurance:

a. "*Acre*" means 43,560 square feet of land on which row widths do not exceed 6 feet, or if row width exceeds 6 feet, the land on which at least 7260 linear feet rows are planted.

b. "*Crop Year*", in lieu of the definition in the General Policy, means the period within which the tomatoes are normally grown beginning August 1 and continuing through harvesting of the spring-planted tomatoes and is designated by the calendar year in which the spring-planted tomatoes are normally harvested.

c. "*Cyclone*" means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1-minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

d. "*Direct consumer marketing*" means the method of selling tomatoes from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

e. "*Excessive rain*" means more than 10 inches of rain on the tomato field within a 24-hour period, after the tomatoes have been seeded or transplanted.

f. "*Freeze*" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit, and cause damage to plant tissue.

g. "*Frost*" means a deposition or covering by minute ice crystals formed from frozen water vapor, which causes damage to plant tissue.

h. "*Harvest*" means the picking of marketable tomatoes on the unit.

i. "*Mature green tomato*" means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so that they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

j. "*Planting*" means transplanting the tomato plants into the field or direct seeding in the field.

k. "*Planting period*" means tomatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted, or spring-planted.

l. "*Plant stand*" means the number of live plants per acre before the plants were damaged due to insurable causes.

m. "*Potential production*" means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6 × 7 (2⁹⁄₃₂ inch minimum diameter) or larger, which the tomato plants would produce or, would have produced per acre, by the end of the insurance period.

n. "*Replanting*" means performing the cultural practices necessary to replant insured acreage to tomatoes.

o. "*Ripe Tomato*" means a tomato which has a definite break in color from green to tannish-yellow, pink or red.

p. "*Tomatoes grown for direct consumer marketing*" means tomatoes initially intended for direct consumer marketing.

Done in Washington, DC, on January 10, 1990.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-1226 Filed 1-18-90; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amendment No. 55; Doc. No. 7619S]

General Crop Insurance Regulations; Canning and Processing Bean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Canning and Processing Bean Endorsement (7 CFR 401.118) to provide for unit division guidelines by type in Illinois, Indiana, Iowa, and Pennsylvania. The intended effect of this rule is to include these states among those identified in section 5 of the policy as states where unit division by type is permitted.

EFFECTIVE DATE: December 31, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a

significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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 action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Canning and Processing Bean Endorsement (7 CFR 401.118) to allow for unit division guidelines by type in Illinois, Indiana, Iowa, and Pennsylvania.

Under the provisions of the Canning and Processing Bean Endorsement, unless states are specifically cited in section 5 of the policy as being states in which unit division guidelines by type are allowed, they will be placed in the same category as those states where the actuarial structure does not permit unit division. Recent expansion of the canning and processing bean crop insurance program into Illinois, Indiana, Iowa, and Pennsylvania has created a condition whereby, unless the endorsement is amended to name these states, unit division by type in such states will not be permitted.

For this reason, FCIC amends the Canning and Processing Bean Endorsement to list Illinois, Indiana, Iowa, and Pennsylvania, as being states in which unit division guidelines are established.

On Friday, October 6, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 41249, to provide for unit division by type in Illinois, Indiana, Iowa, and Pennsylvania. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 41249 is here adopted as a final rule.

Recently, FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for canning and processing beans, appropriate explanatory language has been added to the annual premium and unit division sections of this policy.

Inasmuch as the date for filing contract changes in the service office is December 31, 1989, and sufficient time must be given to allow potential insureds to consider crop insurance based on unit division by type, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; Canning and processing bean.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Canning and Processing Bean Endorsement (7 CFR 401.118), is amended by revising section 3 and the introductory paragraph to section 5 to read as follows:

§ 401.118 Canning and Processing Bean Endorsement.

* * * * *

3. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, applying any applicable premium adjustment percentage (as shown in the actuarial table), for which you may qualify because you have not selected optional units.

* * * * *

5. Unit division.

In addition to units defined in section 17 of the General Crop Insurance Policy, canning and processing bean acreage may be divided into units by type (smap or lima). For Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, New York, Oregon, Pennsylvania, Tennessee, Utah, Washington, and Wisconsin, bean acreage that would otherwise be one unit may be further divided, if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

* * * * *

Done in Washington, DC on January 10, 1990.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-1224 Filed 1-18-90; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 456

[Amendment No. 1; Doc. No. 7644S]

Macadamia Tree Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Macadamia Tree Crop Insurance Regulations (7 CFR part 456), effective for the 1990 and succeeding crop years, to liberalize a policy requirement with respect to the age of bearing macadamia trees when reducing insurance coverage on a unit with less than 90 percent of a complete planting pattern. The intended effect of this rule is to make this provision of the policy more easily administered.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This section does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1992.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This progam 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 action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC amends the Macadamia Tree Crop Insurance Regulations (7 CFR part 456), by liberalizing the requirement with respect to the age of bearing macadamia trees when reducing insurance coverage on a unit with less than 90 percent of a complete planting pattern.

Subsection 4.b. of the current Macadamia Tree Crop Insurance Policy provides that if, at the time insurance attaches, the number of bearing trees over five years old on a unit is less than 90 percent of the number of trees that would comprise a complete planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

The effect of this subsection applies more to macadamia nut crop insurance by referring to bearing trees over five years old and was inadvertently included in the macadamia tree policy.

Therefore, FCIC amends subsection 4.b., to remove the reference to bearing trees over five years old, while retaining the impact of reducing coverage on a percentage basis when the number of trees is less than 90 percent of the complete planting pattern.

On Monday, October 16, 1989, FCIC published a notice of proposed rulemaking in the **Federal Register** at 54 FR 42305, to liberalize a policy requirement with respect to the age of bearing macadamia trees when reducing insurance coverage on a unit with less than 90 percent of a complete planting pattern. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 42305 is hereby adopted as a final rule.

Inasmuch as the insurance period begins on January 1, 1990, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 456

Crop insurance; Macadamia trees.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Macadamia Tree Crop Insurance Regulations (7 CFR part 456), effective for the 1990 and succeeding crop years, as follows:

PART 456—[AMENDED]

1. The authority citation for 7 CFR part 456 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 456, the Macadamia Tree Crop Insurance Regulations, is amended by revising subparagraph 4.b. of the policy to read as follows:

§ 456.7 The application and policy.

* * * * *

4. Amounts of insurance and coverage levels.

* * * * *

b. If, at the time insurance attaches, the number of macadamia trees on a unit is less than 90 percent of the number of macadamia trees that would comprise a complete planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

* * * * *

Done in Washington, DC on January 10, 1990.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-1227 Filed 1-18-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-90-124FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes current grade and size requirements for domestic shipments of Temple oranges and Honey tangerines grown in Florida for the remainder of the 1989–90 season. In late December, a severe freeze damaged much of the Florida citrus crop available for fresh market use. The Citrus Administration Committee (committee) unanimously recommended these relaxations to allow handlers to maximize fresh market shipments of consumer acceptable fruit. This action is based on the committee's assessment of current crop conditions and available supplies of marketable fruit.

EFFECTIVE DATES: January 12, 1990 through August 19, 1990.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USAD, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3919.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (FRA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

Section 905.306 of the rules and regulations (7 CFR 905.306; as amended at 54 FR 48574, November 24, 1989) specifies minimum grade and size

requirements for most varieties of Florida oranges and tangerines for both domestic and export markets. The requirements for the domestic market are specified in that section in Table I of paragraph (a). The domestic market was redefined as the 48 contiguous States and the District of Columbia of the United States and export markets as any destination other than the 48 contiguous States and the District of Columbia of the United States by an amendment to the marketing order (54 FR 37290, September 8, 1989), which revised §§ 905.9 and 905.52. Section 905.306 has been amended by an interim final rule, published in the **Federal Register** (54 FR 46596, November 6, 1989) which reflects these changes to the order.

This action relaxes the minimum grade requirement for domestic shipments of Honey tangerines from Florida No. 1 to Florida No. 1 Golden and relaxes the minimum size requirement for domestic shipments of Honey tangerines from 2⁹⁄₁₆ inches in diameter to 2⁹⁄₁₆ inches in diameter. The minimum size requirement for domestic shipments of Honey tangerines currently appears in error in the Code of Federal Regulations as 2¹¹⁄₁₆. This action corrects that provision to 2⁹⁄₁₆ as it appeared in the **Federal Register** at 47 FR 589, January 6, 1982. This action also relaxes the minimum grade requirement for domestic shipments of Temple oranges from U.S. No. 1 to U.S. No. 1 Golden and relaxes the minimum size requirement for domestic shipments of such oranges from 2⁹⁄₁₆ inches in diameter to 2⁹⁄₁₆ inches in diameter. The grade and size relaxations for domestic shipments of Honey tangerines and Temple oranges need to be effective immeidately, and remain in effect through August 19, 1990. The minimum grade and size requirements for these fruits will revert back to the tighter requirements specified in § 905.306 on August 20, 1990.

In late December 1989, a severe freeze damaged much of the Florida citrus crop available for fresh market use. After evaluating crop conditions, the committee determined that a reduction in the quality and size requirements for Temple oranges and Honey tangerines would allow the industry to maximize fresh market utilization while providng a satisfactory product to meet consumer demand.

The severe cold was especially damaging because it occurred early in the harvest season. Approximately 80 percent of the crop was still on the trees. The economic loss because of the freeze is expected to be high. The committee estimates that the Honey tangerine and Temple orange crops could be reduced by as much as 85–90 percent from October crop estimates. The recommended relaxations will lessen grower and handler losses from the freeze by allowing fruit with minor exterior defects (discoloration) to be utilized in fresh market channels. The internal quality of fruit grading U.S. No. 1 Golden and Florida No. 1 Golden is the same as that of fruit meeting the current minimum requirements of U.S. No. 1 and Florida No. 1. Thus, the eating quality of the additional fruit which will be utilized in the fresh market as a result of the grade relaxations should be the same.

The relaxation of the size requirements will allow fruit smaller than the current minimum sizes to be utilized in the fresh market. This will allow fruit which is of acceptable eating quality, but which has to be harvested slightly smaller because of the freeze, to be utilized in the fresh market. Normally when there is an adequate supply of larger sized fruit, smaller fruit would be used for processing. Because supplies of Honey tangerines and temple oranges are expected to be drastically reduced by the freeze, the industry desires to utilize as much of the crop in the fresh market as possible. The recommended size relaxation will help satisfy consumer demand for fresh citrus fruits while maximizing returns to producers and handlers.

The committee, which administers the program locally, unanimously recommended this emergency action by telephone vote on January 9, 1990. The grade and size relaxations are based on the committee's assessment of the current crop conditions and the available supply of marketable fruit. The committee meets prior to and during each season to review the handling requirements, effective on a continuous basis, for each regulated citrus fruit. Committee meetings generally are open to the public, and interested persons may express their views at these meetings. Due to the emergency situation, there was no time to schedule a public hearing. Pursuant to paragraph (c) of § 905.34 of the order, the committee may, in cases of emergency, vote by telephone and all such votes must be confirmed in writing. The U.S. Department of Agriculture (Department) reviews committee recommendations and information submitted by the committee and other available information and determines whether modification suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Some Florida citrus fruit shipments are exempt from the handling requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

Section 8e of the Act (7 U.S.C. 608e-1) provides that whenever specified commodities, including oranges and grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply the regulations for that area to the imported commodity.

Orange import requirements are specified in § 944.312 (7 CFR part 944), and are effective under section 8e of the Act. That section requires that oranges imported into the United States must meet the same minimum grade and size requirements as those specified for Texas oranges in paragraphs (a)(1) and (a)(2) of § 906.365 Texas Orange and Grapefruit Regulation 34 (54 FR 51737, December 18, 1989). Accordingly, the findings and determinations for imported oranges in part 944 would not be changed by this action and no change in the provisions of Part 944 is necessary. Thus, import requirements would continue to be based upon Texas orange requirements under M.O. 906.

This action reflects the committee's and the Department's appraisal of the need to make the grade and size relaxations hereinafter set forth. The Department's view is that this action will have a beneficial impact on producers and handlers since it would allow Florida citrus handlers to ship those grades and sizes of fruit available

to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxations set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes the grade and size requirements currently in effect for Honey tangerines and Temple oranges; (2) Handlers of these two fruits will need no additional time to comply with the relaxed requirements; and (3) Prompt implementation of these relaxations is needed so that the industry can ship the fruits as soon as possible so as to lessen grower and handler losses from the December 1989 freeze.

List of Subjects in 7 CFR Part 905

Florida, Grapefruit, Marketing agreements, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

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

2. The provisions of § 905.306, paragraph (a), Table I are amended by revising the entry for Temple Oranges and Honey Tangerines to read as follows:

[**Note:** This action will be published in the Code of Federal Regulations.]

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
*	*	*	*
Oranges:			
Temple	1/12/90–8/19/90.	U.S. No. 1 Golden.	2–4/16
	On and after 8/20/90.	U.S. No. 1	2–8/16
*	*	*	*
Tangerines:			
Honey	1/12/90–8/19/90.	Florida No. 1 [1] Golden.	2–4/16
	On and after 8/20/90.	Florida No. 1.	2–6/16
*	*	*	*

[1] Florida No. 1 Golden grade for Honey tangerines means the same as provided in Rule No. 20–35.03 of the Regulation of the Florida Department of Citrus.

* * * * *

Dated: January 12, 1990.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 90–1164 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 907

[Navel Orange Regulation 703]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 19 through January 25, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh navel oranges with the demand for such oranges during the period specified. This action was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

DATES: Regulation 703 (7 CFR part 907) is effective for the period from January 19 through January 25, 1990.

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

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

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

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

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

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

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented 85 percent of the total production in 1988–89. District 2 is located in the southern coastal area of California and represented 13 percent of 1988–89 production; District 3 is the desert area of California and Arizona, and it represented approximately 1 percent; and District 4, which represented approximately 1 percent, is northern California. The Committee's estimate of 1989–90 production is 83,000

cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 70,633 cars during the 1988–89 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona navel oranges. The Committee estimates that about 60 percent of the 1989–90 crop of 83,000 cars will be utilized in fresh domestic channels (49,500 cars), with the remainder being exported fresh (9 percent), processed (29 percent), or designated for other uses (2 percent). This compares with the 1988–89 total of 45,581 cars shipped to fresh domestic markets, about 64 percent of the crop.

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

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

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

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

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

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

The Committee met publicly on January 16, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, with seven members voting in favor, two opposing, and one abstaining, that 1,800,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting.

This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1989–90 marketing policy. This recommended amount is 100,000 cartons more than estimated in the tentative shipping schedule adopted by the Committee on November 14, 1989. Of the 1,800,000 cartons, 1,476,000 are allotted for District 1, 234,000 are allotted for District 2, and 90,000 are allotted for District 4. District 3 is not regulated since approximately 75 percent of its crop to date has been picked.

During the week ending on January 11, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,903,000 cartons compared with 1,660,000 cartons shipped during the week ending on January 12, 1989. Export shipments totaled 390,000 cartons compared with 425,000 cartons shipped during the week ending on January 12, 1989. Processing and other uses accounted for 562,000 cartons compared with 482,000 cartons shipped during the week ending on January 12, 1989.

Fresh domestic shipments to date this season total 17,289,000 cartons compared with 13,208,000 cartons shipped by this time last season. Export shipments total 2,773,000 cartons compared with 1,824,000 cartons shipped by this time last season. Processing and other use shipments total 4,412,000 cartons compared with 3,406,000 cartons shipped by this time last season.

For the week ending on January 11, 1990, regulated shipments of navel oranges to the fresh domestic market were 1,882,000 cartons on an adjusted allotment of 1,824,000 cartons which resulted in net overshipments of 58,000 cartons. Regulated shipments for the current week (January 12 through January 18, 1990) are estimated at 1,725,000 cartons on an adjusted allotment of 1,723,000 cartons. Thus, overshipments of 2,000 cartons could be carried over into the week ending on January 25, 1990.

The average f.o.b. shipping point price for the week ending on January 11, 1990, was $7.20 per carton based on a reported sales volume of 1,594,000 cartons compared with last week's average of $7.20 per carton on a reported sales volume of 1,266,000 cartons. The season average f.o.b. shipping point price to date is $7.82 per carton. The average f.o.b. shipping point price for the week ending on January 12, 1989, was $7.37 per carton; the season average f.o.b. shipping point price at this time last season was $8.57 per carton.

Over the weekend of December 22–25, Florida, Texas, Georgia, and Louisiana experienced a major freeze in produce-growing areas. In Florida, temperatures were at or below 27 degrees for the longest duration in many years. In addition, Texas citrus grown in the Rio Grande Valley experienced at least 16 hours of temperatures below 26 degrees on December 22–23.

According to a January 11 crop report issued by the National Agricultural Statistics Service, the citrus production

estimate is 18 percent lower than in December and 25 percent below last season. This significant reduction is due mostly to the severe freezing temperatures in the Florida and Texas citrus belts. Fruit droppage is increasing in all areas of Florida, and the Texas fresh market citrus harvest has ended. In addition, orange production is down 19 percent from a December 1 forecast and 24 percent below last season. This decline is due mostly to Florida's 29 percent decrease from December and 37 percent decline from last season. The severe December freeze in Florida's citrus belt further reduced an already short orange crop.

The Committee reports that overall demand for navel oranges is fairly good and the market is firm. The Committee discussed the recent Florida and Texas freezes and is continuing to monitor the effects of those freezes on the California-Arizona navel orange industry.

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

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1989–90 season average fresh on-tree price is estimated to be between $4.80 and $5.10 per carton. This range is equivalent to 73–78 percent of the projected season average fresh on-tree parity equivalent price of $6.54 per carton. Thus, the 1989–90 season average fresh on-tree price is not expected to exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from January 19 through January 25, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

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

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

In addition, market information needed for the formulation of the basis for this action was not available until January 16, 1990, and this action needs to be effective for the regulatory week which begins on January 19, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Arizona, California, Marketing agreements, marketing orders, Navel oranges.

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

PART 907—[AMENDED]

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

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

2. Section 907.1003 is added to read as follows:

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

§ 907.1003 Navel Orange Regulation 703.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 19 through January 25, 1990, is established as follows:

(a) District 1: 1,476,000 cartons;
(b) District 2: 234,000 cartons;
(c) District 3: unlimited cartons;
(d) District 4: 90,000 cartons.

Dated: January 17, 1990.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90–1417 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 910

[Lemon Regulation 701]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 701 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 275,000 cartons during the period from January 21, 1990, through January 27, 1990. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 701 (7 CFR part 910) is effective for the period from January 21, 1990, through January 27, 1990.

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

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

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

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

There are aproximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual

receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

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

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on January 16, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

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

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.700 is added to read as follows:

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

§ 910.700 Lemon Regulation 701.

The quantity of lemons grown in California and Arizona which may be handled during the period from January 21, 1990, through January 27, 1990, is established at 275,000 cartons.

Dated: January 17, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–1416 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–2–M

Rural Electrification Administration

7 CFR Part 1772

REA Specification for Seven Wire Galvanized Steel Strand

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR part 1772, Telephone Standards and Specifications, by adding § 1772.98, List of REA Telephone Standards and Specifications included in 7 CFR 1772.100 to 1772.999 and § 1772.370 to issue REA Specification for Seven Wire Galvanized Steel Strand, by adopting, with a minor addition by REA, ASTM A457, an industry standard for zinc-coated steel wire strand. This action will have very little impact on the manufacturers of strand. It will not affect the current designs or manufacturing techniques. Such action will also be the most effective method of assuring current state-of-the-art technology for strand to benefit REA telephone borrowers.

EFFECTIVE DATE: This regulation is effective January 19, 1990. The incorporation by reference is approved by the Director of the **Federal Register** as of January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, telephone (202) 382–8667.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR part 1772, Telephone Standards and Specifications, by issuing PE–37, REA Specification for Seven Wire Galvanized Steel Strand.

This action will not (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

REA has issued a series of publications which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In these publications REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds.

REA intends, where possible, to have the three digit section numbers of part 1772 correspond to our old PE specification numbers with an extra zero or two added, respectively, to old one and two digit specification numbers. The old specification numbers that begin with the prefix PE will be retired for standards and specifications whose text

is printed in full in the Code of Federal Regulations. Thus, this new section of 7 CFR part 1772, corresponding to our old Specification PE–37, is designated 1772.370, and the number PE–37 will no longer be used.

ASTM is a scientific and technical organization formed for the development of standards on characteristics and performance of materials, products, systems, and services. ASTM is the world's largest single source of voluntary consensus standards. An ASTM standard represents a common viewpoint of those parties concerned with its provisions; namely, producers, users, and general interest groups. It is intended to aid industry, government agencies, and the general public.

It is REA policy to use the standards, rules, and regulations of such engineering and standard groups as ASTM, the American National Standards Institute (ANSI), and the various national engineering societies, and such references as the National Electrical Safety Code (NESC) and the National Electrical Code (NEC), to the greatest extent practical as determined by REA. REA is also guided by OMB Circular No. A–119, Federal Participation in the Development and Use of Voluntary Standards in its activities. When there are no national standards, or where REA determines that existing national standards are not satisfactory for REA purposes, REA prepares the standards for materials and equipment as necessary.

REA has determined that the ASTM standard for zinc-coated steel wire strand, with a minor addition, is satisfactory for REA purposes. The addition is an additional marking requirement that all coils and reels of strand having Class B and Class C coatings shall be marked with a stripe of deep-colored paint about 3 inches wide and 6 inches long as indicated below:

Class of coating	Color of paint
B	Green
C	Orange

This marking shall be applied to the exposed convolution of strand in the eye of coils and located near the midpoint on the outside layer of strand on reels. The marking shall not cover any welded joint markings.

This action will have very little impact on the manufacturers of strand since it will require no changes in the current designs or manufacturing techniques of strand. The REA telephone borrowers will benefit from assurance of current state-of-the-art technology for strand.

List of Subjects in 7 CFR Part 1772

Communications, Communications equipment, Loan programs, communications, Telecommunications, telephone, Incorporation by reference.

Therefore, REA amends 7 CFR part 1772 as follows:

1. The authority citation for 7 CFR part 1772 continues to read as follows:

Authority: 7 U.S.C. 901 et seq.; 7 U.S.C. 1921 et seq.

2. Sections 1772.98 through 1772.999 are added to read as follows:

§ 1772.98 List of telephone standards and specifications included in 7 CFR 1772.100 to 1772.999.

The following telephone standards and specifications are included in §§ 1772.100 to 1772.999. These are standards and specifications not incorporated by reference under § 1772.97.

Section	Issue date	Title
1772.370	1–19–90	REA Specification for Seven Wire Galvanized Steel Strand.

§§ 1772.99–1772.369 [Reserved]

§ 1772.370 REA specification for seven wire galvanized steel strand.

(a) REA incorporates by reference ASTM A475–78, Standard Specification for Zinc-Coated Steel Wire Strand, issued May 1978. All seven wire galvanized steel strand purchased after April 1, 1990, for use on telecommunications systems financed by REA loan funds must conform to this standard. 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 on (insert date of publication of final rule). Copies of ASTM A475–78 are available for inspection during normal business hours at the Office of the Federal Register, 1100 L Street, NW., Washington, DC 20402, and at the Rural Electrification Administration, Administrative Services Division, room 0175–S, U.S. Department of Agriculture, Washington, D.C. 20250, telephone 202–382–9551. Copies are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, telephone 215–299–5400.

(b) In addition to the requirements of ASTM 475–78, all coils and reels having Class B or C coatings shall be marked with a 3-inch wide and 6-inch long deep-colored stripe, green or orange, respectively, to identify the class of galvanized coating of the strand. This marking shall be applied to the exposed convolutions of the strand in the eye of the coils and located near the midpoint on the outside layer of strand on the reels. The marking shall not cover any welded joint markings.

§§ 1772.371–1772.999 [Reserved]

Dated: January 11, 1990.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90–1211 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–15–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 705 and 741

Designation of Low-Income Status

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Final rule.

SUMMARY: Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes Federal credit unions "serving predominantly low-income members" to receive share accounts from nonmembers. Some federally-insured state-chartered credit unions have comparable authority under state law. The purposes of this rule are to (1) clarify that a Federal credit union must receive a designation from NCUA to act pursuant to this authority; (2) establish procedures for granting and revoking the designation; and (3) establish that a federally-insured state-chartered credit union must receive a designation from its state regulator with the concurrence of NCUA.

EFFECTIVE DATE: February 20, 1990.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC., 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna or Hattie M. Ulan, Office of General Counsel, at above address or telephone: 202/682–9630.

SUPPLEMENTARY INFORMATION: In general, credit unions accept shares only from their members. There are limited exceptions to this rule. Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes all Federal credit unions (FCU's) to accept shares from public units and other credit unions. Section 107(6) also authorizes FCU's serving "predominately low-income members (as defined by the [NCUA]

Board)" to accept shares from nonmembers. Some state credit union acts provide similar authority for state-chartered credit unions. The NCUA Board has defined the terms "predominately" and "low-income members" in paragraphs 700.1(h) and (i) of the NCUA Regulations (12 CFR 700.1)). As a matter of policy, FCU's serving predominately low-income members pursuant to the FCU Act and the regulatory definitions have received a designation from the NCUA enabling them to accept nonmember shares. The designation process, although a longstanding practice, has never been set forth in the regulations. To eliminate any ambiguity, the Board issued a proposed amendment in July, 1989, with a ninety-day public comment period (*see* 54 FR 31198, 7/27/89). The Board proposed to add the designation requirement to § 701.32 of the Regulations, to move the definitions of "low-income" and "predominantly" from § 700.1 to § 701.32 and to add a provision to § 741.5 concerning federally-insured, state-chartered credit unions. A technical change to part 705 was also proposed. The Board has adopted the proposed amendments in final form with one modification.

Comments

Seven comments were received. Three comments were from national credit union trade associations. One comment was received from a Federal credit union and one from a state credit union league. Comments were also received from a national savings and loan trade association and a banker's trade association.

Discussion

The reaction of most of the commenters was favorable. Most commenters were concerned with the procedural aspects of receiving, reviewing and revoking the low-income designation rather than the requirement of a designation. Three commenters requested that the regulation list the necessary information to be provided to the Regional Director to receive the low-income designation. The Board believes that a list of requirements is not necessary. A credit union only needs to provide the pertinent information necessary to show they serve low-income members as defined in the rule and any other information specifically requested by the Regional Director.

The designation will be reviewed at the credit union's annual examination or as deemed appropriate and it is the credit union's responsibility to ensure they remain within the definition to retain the low-income designation. Two commenters objected to the annual review as unnecessary. The Board believes that the annual review is appropriate to maintain compliance with the statutory and regulatory requirements.

The proposed amendment stated that the designation will be removed if the low-income requirements are no longer being met or for other good cause. Four commenters objected to the proposal to remove the low-income designation "for other good cause" apart from the documented change in the low-income composition of the membership. The commenters believe that field of membership requirements should be the only criteria for removal of the designation. In addition, these commenters argue that NCUA has other adequate resources available to address any instances of abuse of nonmember shares or other safety and soundness problems in limited-income credit unions. The Board agrees that enforcement powers, such as cease-and-desist and conservatorship, are more appropriate to address these situations and has removed the phrase "for other good cause" from the final rule.

Removal of the low-income designation from a Federal credit union is appealable to the NCUA Board. Two commenters suggested that the proposed rule needs clarification on how the appeal process operates when a Regional Director revokes the low-income designation. The appeal process consists of appealing to the NCUA Board through the Regional Director after the FCU is notified of the removal action and its appeal rights. This process is consistent with the established NCUA appeals process in scope and method. The Board does not believe any further clarification is needed in this area.

Some state credit union acts provide similar authority to state-chartered credit unions to accept nonmember shares based on service to predominantly low-income members. In the case of state-chartered credit unions that are insured by the National Credit Union Share Insurance Fund (NCUSIF), the final rule requires, as did the proposal, that the state credit union regulator make the low-income designation under state law with the concurrence of the appropriate NCUA Regional Director. Because the risk of misuse of insured nonmember shares is borne by the NCUSIF, it is appropriate that NCUA concurrence be required. Two commenters objected to this provision because of possible conflict situations (e.g., the state refused the designation, and NCUA was willing to grant the designation, or vice versa). The Board believes that in those circumstances where a state has a system to regulate the designation and chooses to deny the designation to the credit union, it is best to defer to the state's decision. If the state is willing to grant the designation, and the Regional Director does not believe it is appropriate based on risks to the NCUSIF, the Regional Director can withhold concurrence. In this way, conflict is minimized. Removal of the designation for a federally-insured state-chartered credit union (FISCU) will be made by the state regulator with the concurrence of the Regional Director. Any appeal rights of the FISCU will be determined by the state.

The NCUA Board also requested comment on the proper treatment of a credit union's existing nonmember shares in the event of removal of low-income designation. The Board suggested that existing shares be grandfathered and that the credit union not accept any new nonmember shares once the low-income designation is removed. Share certificates could be held to maturity but could not be renewed. Three commenters specifically supported the grandfathering of existing shares. One commenter suggested that all deposits be returned to nonmembers within a reasonable time after removal of the designation. The Board does not believe that it is necessary for the regulation to require the return of existing shares. Unless otherwise ordered by the Board, once the designation is removed, existing shares in any federally-insured credit union may be maintained until withdrawal, or in the case of share certificates, until maturity. These accounts will remain insured even though the low-income designation has been removed.

The Board also adopts in final form the conforming amendment to part 705 of the regulations. Part 705 addresses the community development revolving loan program for credit unions. One of the requirements for a credit union participating in the program is that it meet the definitions of "predominantly" and "low-income members" or the applicable state standards for serving low-income members. A provision is added to § 705.3 stating that the credit union must have "a current designation as a low-income credit union pursuant to § 701.32(d)(1) of the NCUA Regulations or, in the case of a state-chartered credit union, applicable state standards."

Regulatory Procedures

Regulatory Flexibility Act

This final rule adds to the regulations the longstanding policy that credit unions wishing to accept nonmember shares (other than from public units or other credit unions) based on their low-income status obtain a low-income designation from the NCUA or the appropriate state credit union regulator. Since this is not a new procedure, the Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions (those under $1 million in asset size). Therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule contains one paperwork requirement. Any credit union requesting a low-income designation must submit information to the NCUA or the appropriate state credit union regulator showing that it meets the "predominantly" and "low-income" definitions under the NCUA Regulations or appropriate state standards. The Office of Management and Budget has approved this paperwork requirement (OMB No. 3133–0017, approved for use through 11/30/92).

Executive Order 12612.

This rule applies to Federal credit unions as well as to federally-insured state-chartered credit unions that accept nonmember accounts. The acts and practices subject to the rule have implications for the entire federally-insured credit union system and the NCUSIF, and are not unique to any one type of charter. Accordingly, the rule provides for NCUA concurrence in a state determination of a low-income designation for federally-insured state-chartered credit unions.

List of Subjects in 12 CFR Parts 700, 701, 705 and 741

Credit unions, Low-income designation.

By the National Credit Union Administration Board on January 11, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 700—DEFINITIONS

1. The authority citation for part 700 is revised to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.1 [Amended]

2. Paragraphs (h) and (i) of § 700.1 are removed and paragraphs (j), (k), (l) and (m) are redesignated as paragraphs (h), (i), (j) and (k), respectively.

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

3. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

4.–5. The heading for § 701.32 is revised and a new paragraph (d) is added to read as follows:

§ 701.32 Payments on shares by public units and nonmembers, and low-income designation.

* * * * *

(d) Designation of low-income status. (1) Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes Federal credit unions serving predominantly low-income members to receive shares, share drafts and share certificates from nonmembers. In order to utilize this authority, a Federal credit union must receive a low-income designation from its NCUA Regional Director. The designation shall be reviewed at the credit union's annual examination or such other time as may be appropriate, and may be removed by the Regional Director upon notice to the Federal credit union if the definitions set forth in paragraphs (d)(2) and (d)(3) of this section are no longer met. Removals may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.

(2) The term "low-income members" shall include those members whose annual income falls at or below the lower level standard of living classification as established by the Bureau of Labor Statistics and as updated by the Employment and Training Administration of the U.S. Department of Labor; those members who are residents of a public housing project who qualify for such residency because of low income; those members who qualify as recipients in a community action program; and those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

(3) The term "predominantly" is defined as a simple majority.

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

6. The authority citation for part 705 is revised to read as follows:

Authority: Pub. L. 97–35, 95 Stat. 498; Pub. L. 99–609, note to 42 U.S.C. 9822; Pub. L. 101–144.

7. Section 705.3 is revised to read as follows:

§ 705.3 Definition

For purposes of this part, a "participating credit union" means a state- or federally-chartered credit union that is specifically involved in stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership meets the definitions of "predominantly" and "low-income members" as found in § 701.32(d)(2) and (d)(3) of the NCUA Regulations (excluding students), or applicable state standards as reflected by a current designation as a low-income credit union pursuant to § 701.32(d)(1) or § 741.5(b) of the NCUA Regulations or, in the case of a state-chartered nonfederally-insured credit union, under applicable state standards; and has submitted an application and has been selected for participation in the Program in accordance with the part.

PART 741—REQUIREMENTS FOR INSURANCE

8. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790 and Pub. Law 101–73. Section 741.9 is also authorized by 31 U.S.C. 3717.

9. Section 741.5 is revised to read as follows:

§ 741.5 Maximum public unit and nonmember accounts, and low-income designation.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally-insured state-chartered credit unions for an exemption from the 20% limitation of § 701.32 will be made and reviewed on the same basis as that provided in § 701.32 for Federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts under state law The state regulator shall make the low-income designation with the concurrence of the appropriate Regional Director. The designation will be made and reviewed by the state regulator on the same basis as that provided in § 701.32(d) for Federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

[FR Doc. 90–1153 Filed 1–18–90; 8:45 am]
BILLING CODE 7535–01–M

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The current 18 percent per year Federal credit union loan rate ceiling is scheduled to revert to 15 percent on March 9, 1990, unless otherwise provided by the NCUA Board. A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of Federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the NCUA Board hereby continues an 18 percent Federal credit union loan rate ceiling for the period from March 9, 1990, through September 8, 1991. Loans and line of credit balances existing prior to May 15, 1987, may continue to bear their contractual rate of interest, not to exceed 21 percent. Further, the NCUA Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: March 9, 1990.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Charles H. Bradford, Chief Economist at the above address. Telephone number: (202) 682–9621.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for Federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the NCUA Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other Federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) Money market interest rates have risen over the preceding six months; and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the NCUA Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980's, the NCUA extended the 21 percent ceiling four additional times. On March 11, 1987, the NCUA Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of a long period of falling market interest rates. The Board felt the 18 percent ceiling would fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions could react to any adverse economic developments, and would ensure that any increase in the cost of funds would not impinge on earnings of Federal credit unions.

The NCUA Board would prefer not to set loan interest rate ceilings for Federal credit unions. In the final analysis the market sets the rates. The Board supports free lending markets and the ability of Federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979 Congress set the ceiling at 15 percent but authorized the NCUA Board to set a ceiling in excess of 15 percent if the Board can justify it. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Justification for a Ceiling Above 15 Percent

Current economic conditions necessitate a loan ceiling above 15 percent. Short term interest rates, as measured by the three-month Treasury bill rate, have cycled up and down since the current 18 percent ceiling was extended on September 10, 1988, but the recent bill rate of 7.65 percent (for the week ending December 15, 1989) is 41 basis points higher than it was in September 1988, when it averaged 7.24 percent. Thus, while rates have declined the last six months, they are currently higher than they were when the 18 percent loan ceiling was last extended. Therefore, despite a decline in interest rates the past six months, a ceiling of 18 percent is perhaps even more justified today than it was in September 1988. See Table 1.

Table 1.—3-Month Treasury Bill Rate Market Yield

[Averages of daily figures]

1988:	
September	7.24
October	7.35
November	7.76
December	8.07
1989:	
January	8.27
February	8.53
March	8.82
April	8.65
May	8.43
June	8.15
July	7.88
August	7.90
September	7.75
October	7.64
November	7.69
December*	7.65

*Week ending December 15, 1989.

A drop in the loan ceiling to 15 percent could threaten the safety and soundness of many credit unions by promoting adverse trends in growth, liquidity, capital or earnings. Each of these factors is briefly reviewed below.

Growth. Credit union growth has slowed significantly the past two years, and particularly the first six months of 1989. Data for December 1989 are not yet available. Following share and asset growth rates of over 20 percent in 1985 and 1986, Federal credit union share growth slowed to 8.4 percent in 1988 and to 2.5 percent the first six months of 1989, an annual growth rate of 5.0 percent. Asset growth slowed to 8.9 percent in 1988 and 2.7 percent the first six months of 1989, an annual growth rate of 5.4 percent.

Liquidity. Reflecting the growth slowdown, credit union liquidity tightened somewhat, as loans have continued to grow briskly in the face of very sluggish share and asset growth. Loan-to-share ratios for Federal credit unions rose from a low of 62.9 percent in December 1986 to 70.6 percent in December 1988 and 72.6 percent in June 1989.

The "liquidity ratio", a new key ratio in the CAMEL ratio series, tightened a

little from December 1988 to June 1989. That ratio deducts short term liabilities from cash and short term investments, and divides the balance (whether plus or minus) by assets. Short term assets increase liquidity and short term liabilities decrease liquidity. The CAMEL liquidity ratio for Federal credit unions tightened slightly from 0.0 percent in December 1988 to −2.9 percent in June 1989. While these are healthy ratios (the closer to zero the better) the fact that the trend has turned negative argues against any action that might reduce credit union flexibility in coping with any potential adverse interest rate trends.

Capital. While slow growth hurts liquidity, it helps capital-to-asset ratios. This does not necessarily mean that earnings and capital grow rapidly. Rather, it may simply mean that the relationship between earnings and capital assets improves because of a slowdown in asset growth. There are two ways to assess the capital-to-asset ratio change. One is that as share growth slows while loan growth continues, the loan-to-share ratio rises and thus higher-yielding assets (loans) replace lower-yielding assets (investments) in the portfolio mix and earning margins (and thus capital) rise. Two, from a mathematical viewpoint, assets flow in first, up front, while earnings on those assets flow in over time. When assets (the denominator) are growing slowly while net income and thus capital (the numerator) are flowing in from previously accumulated assets at a pace exceeding asset growth, the capital-to-asset ratio rises.

In 1986 the capital-to-asset ratio at Federal credit unions was 6.1 percent. In 1988 it was 6.8 percent, and in June 1989 it was 7.0 percent. Those are good ratios and the NCUA does not want to jeopardize them by a precipitate lowering of the loan rate ceiling.

Earnings Spreads. Earning margins of Federal credit unions have declined somewhat over the past several years:

• While the cost of funds for credit unions has declined in recent years, spreads have declined. Since 1984, gross spreads have fallen by 67 basis points and net spreads by 11 basis points. See Table 2. there was a slight improvement in both gross and net spreads in December 1988 and June 1989, but the spread ratios are still very close to their lows reached in December 1987.

TABLE 2.—FEDERAL CREDIT UNION SPREADS, DECEMBER 1984–1988 AND JUNE 1989

	1984	1985	1986	1987	1988	June 1989
Return on:						
Loans (percent)	13.80	13.52	12.68	11.58	11.32	11.27
Investments	10.94	9.47	7.94	7.67	7.65	8.58
Earning assets	12.85	12.18	10.91	10.11	10.02	10.41
Gross return on total assets	12.26	11.60	10.39	9.64	9.55	9.93
Minus cost of total assets	7.54	7.23	6.37	5.65	5.60	5.88
Equal gross spread (bp)	472	437	402	399	395	405
Minus operating expenses (bp)	355	337	315	308	309	319
Plus other income (bp)	36	48	55	46	52	55
Equal net spread (bp) [1]	152	148	142	137	138	141

[1] Net spread before net loan charge offs and interest refunds, and before statutory reserve transfers.
Note: bp=basis points.

• Credit union losses represent a significant and growing problem that must be weighed in setting a loan rate ceiling. In June 1989, there were 1,060 Federal credit unions, 11.8 percent of the total, that registered losses. Table 3 shows the credit unions experiencing losses by size. Most credit unions with negative earings are small, less than $10 million in assets. These credit unions would be among those most adversely affected by a reduction in the interest rate ceiling to 15 percent.

TABLE 3.—FEDERAL CREDIT UNIONS EXPERIENCING LOSSES

Asset Size	Number as of June 1989
Less than $1 million	387
$1 to $2 million	168
$2 to $5 million	185
$5 to $10 million	135
$10 to $20 million	71
$20 to $50 million	73
$50 million and over	41

TABLE 3.—FEDERAL CREDIT UNIONS EXPERIENCING LOSSES—Continued

Asset Size	Number as of June 1989
Total	1,060

In summary, declining earning spreads, a sizeable number of credit unions showing losses, a significant slowdown in share and asset growth, and slight tightening of liquidity during the past year should raise a warning flag against setting the loan rate ceiling too low, thus threatening the safety and soundness of many credit unions by reducing their flexibility. The major stipulations set forth in Public Law 96–221 for the NCUA Board to set a loan ceiling above 15 percent are evident.

Many credit unions must charge over 15 percent interest to maintain earnings. See Table 4. This is particularly true for unsecured personal loans (including credit card lines) which have high costs and high delinquency ratios and high losses associated with them. These loans account for 20 percent of all credit union lending.

TABLE 4.—DISTRIBUTION OF FEDERAL CREDIT UNION INTEREST RATES JUNE 1989

Rate	Unsecured loans	New auto loans	First mortgages	Other real estate
0 to 9.9%	27	883	315	85
10 to 14.9	3,145	6,340	2,289	3,454
15 to 15.9	2,782	103	59	65
16 to 16.9	1,067	10	6	4
17 to 17.9	372	2	1	4
18 to 18.9 [1]	832	6	2	5
19 to 19.9	1	0	0	0
20 to 20.9	3	0	0	1
21 and over	2	1	2	0
Total [2]	8,231	7,345	2,674	3,638

	Agricultural loans	Commercial loans	Other loans to members
0 to 9.9%	5	17	477
10 to 14.9	226	408	5,536

	Agricultural loans	Commercial loans	Other loans to members
15 to 15.9	55	43	1,008
16 to 16.9	8	10	183
17 to 17.9	1	0	31
18 to 18.9 [1]	4	5	110
19 to 19.9	0	0	0
20 to 20.9	0	0	0
21 and over	0	0	1
Total [2]	299	484	7,346

[1] Note: All loan rates in the 18 to 18.9 percent bracket were exactly 18 percent.

[2] The number of credit unions offering the loan type and reporting rates charged. Some did not offer the loan type or report rates; accordingly the totals will be less than the number of Federal credit unions.

Over 60 percent of the Federal credit unions that offer unsecured personal loans charge 15 percent or more for these loans. While loan rates are generally lower for other types of loans, a sizeable number of credit unions are charging rates above 15 percent for other loans as well; they would be adversely affected by a 15 percent ceiling.

Efficiency of operations is an important determinant in setting a loan rate. Unfortunately, some inefficient credit unions could be forced into insolvency with a loan ceiling as low as 15 percent. Thus, to drop the loan ceiling to 15 percent would place severe strains on a large segment of the credit union movement.

Justification for maintaining the Current Ceiling at 18 Percent

While a loan ceiling above 15 percent is justified, based on the foregoing analysis, the NCUA Board cannot justify a rate above the current 18 percent ceiling, light of market conditions. Market interest rates have fallen dramatically since 1980. Current rates are anywhere from half to less than two-thirds those of the peak year 1980 when a 21 percent ceiling was first imposed and subsequently extended until May 15, 1987. See Table 5.

TABLE 5.—MARKET INTEREST RATES ON SELECTED INSTRUMENTS

December of	Prime Rate	Treasury Securities		
		3-Month	1-Year	10-Year
1980	21.50	15.49	13.23	12.84
1981	15.75	10.85	11.57	13.72
1982	11.50	7.94	8.23	10.54
1983	11.00	9.00	9.24	11.83
1984	10.75	8.06	8.60	11.50
1985	9.50	7.10	7.16	9.26
1986	7.50	5.53	5.55	7.11
1987	8.75	5.77	6.69	8.99
1988	10.50	8.07	8.32	9.11

TABLE 5.—MARKET INTEREST RATES ON SELECTED INSTRUMENTS—Continued

December of	Prime Rate	Treasury Securities		
		3-Month	1-Year	10-Year
1989*	10.50	7.65	7.22	7.82

*Week ending December 15, 1989.

Economic conditions warranting an interest rate ceiling above 18 percent, such as high inflation and high interest rates, are unlikely in the next 18 months. Rates have been on an irregular long term downtrend and have been declining for about nine months as economic growth slowed the last half of 1989; growth will be even more sluggish in 1990. The staff expects short term interest rates to fall about 90 basis points more and long term rates about 30 basis points more over the next two or three quarters. The interest rate declines the staff foresees for the next year argue against raising the loan rate ceiling above its current 18 percent level.

An 18 percent ceiling will provide adequate flexibility to adjust to foreseeable changing economic conditions and should accommodate modest increases in the cost of funds. No more than half a dozen credit unions currently charge any rates above 18 percent. Presumably these loans are contracts that existed prior to May 15, 1987, when the ceiling was dropped from 21 percent to 18 percent.

Accordingly, the NCUA Board has continued the Federal credit union loan interest rate ceiling of 18 percent per year for the period from March 9, 1990 through September 8, 1991.

As previously indicated, loans and line of credit balances existing on or before May 15, 1987 may continue to bear their contractural rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant it.

Regulatory Procedures

Administrative Procedures Act

The NCUA Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the NCUA Board has considered the need for this rule, and the alternatives, as set forth above.

Executive Order 12612

This Final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal Credit Unions.

List of Subjects in 12 CFR Part 701

Credit unions, Loan interest rates.

By the National Credit Union Administration January 11, 1990. Effective date of this Final rule is March 9, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Public Law 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.21(c)(7) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) *Loan interest rates—(i) General.* Except when a higher maximum rate is provided for in § 701.21(c)(7)(ii), a Federal credit union may extend credit to its members at rates not to exceed 15 percent per year on the unpaid balance inclusive of all finance charges. Variable rates are permitted on the condition that the effective rate over the term of the loan (or line of credit) does not exceed the maximum permissible rate.

(ii) *Temporary rates.* (A) 21 percent maximum rate. Effective from December 3, 1980, through May 14, 1987, a Federal credit union may extend credit to its members at rates not to exceed 21 percent per year on the unpaid balance inclusive of all finance charges. Loans and line of credit balances existing on or before May 14, 1987, may continue to bear rates of interest of up to 21 percent per year after May 14, 1987.

(B) *18 percent maximum rate.* Effective May 15, 1987, a Federal credit union may extend credit to its members

at rates not to exceed 18 percent per year on the unpaid balance inclusive of all finance charges.

(C) *Expiration.* After September 8, 1991, or as otherwise ordered by the NCUA Board, the maximum rate on Federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before September 8, 1991.

* * * * *

[FR Doc. 90–1154 Filed 1–18–90; 8:45 am]
BILLING CODE 7535–01–M

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12 CFR Parts 701 and 741

Fees Paid by Federal Credit Unions; Share Insurance and One Percent Capitalization Deposit

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule amends existing § 701.6 and 741.9 of the NCUA Rules and Regulations (12 CFR 701.6 and 741.9) to add a new subsection to each Section entitled "Assessment of Administrative Fee and Interest for Delinquent Payment." These amendments provide for the assessment of an administrative fee for any operating fee, insurance capitalization deposit, or insurance premium payment which is not received on its due date. The administrative fee is intended to compensate the NCUA for the additional administrative expenses incurred as a result of late payments. These amendments also provide for interest on such late payments to compensate the NCUA for interest lost by NCUA on these funds due to late payment.

EFFECTIVE DATE: January 19, 1990.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Controller, at the above address, telephone: (202) 682–9710.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Background

Sections 105 and 202 of the Federal Credit Union Act (12 U.S.C. 1755 and 1782) authorize the NCUA Board to assess operating fees on all Federal credit unions and the insurance capitalization deposit and insurance premiums on all federally-insured credit unions. Sections 120 and 209 of the Federal Credit Union Act (12 U.S.C 1766 and 1789) grant the NCUA Board general rulemaking authority. In addition, 31 U.S.C. 3717 grants Federal agencies the authority to impose fees and penalties for processing and handling delinquent claims and interest on such claims. In November, the NCUA Board issued proposed amendments authorizing assessments for late payment of operating fees and insurance capitalization deposits and premiums (see 54 FR 47991, 11/20/89).

In December of every year, the NCUA sends invoices to all federally-insured credit unions for the amount due for their capitalization deposit and annual insurance premium (if assessed). For Federal credit unions, the invoice also sets out the amount due for the credit union's operating fee. Each year, a significant number of credit unions fail to remit the required payments on time. As a result, the NCUA is required to undertake collection efforts which involve: identifying those credit unions that are delinquent; maintaining accounts receivable records; sending additional notices to the delinquent credit unions stating that the share insurance deposit, insurance premium, and/or operating fee are overdue; and, as necessary in some cases, making personal contact with the credit union through telephone calls or on-site visits to collect the delinquent fees. Also, delinquent payments must be processed individually rather than centrally resulting in additional processing burdens. Finally, when the operating fees and share insurance deposits/premiums are not received on time, the NCUA loses the interest it would otherwise receive on its investment of these funds in U.S. Treasury securities.

Pursuant to the authorities noted above, the Board has determined that these costs should be charged to the delinquent credit unions rather than being borne by all credit unions. Because the administrative burden of identifying and providing initial notices to delinquent credit unions is essentially the same irrespective of the amount owing, the Board has determined that it is fair to charge a basic administrative fee for this cost.

The basic administrative fee for payments due in 1990 will be $52.00. This fee was calculated on the basis of the actual staff time involved and direct costs of identifying delinquent credit unions and providing late notices to them. In addition, delinquent credit unions will be charged for the actual cost of collection work by NCUA personnel calculated my multiplying the actual time expended by the hourly compensation of the NCUA staff members typically involved in these activities. For 1990 payments, the hourly rate will be $20. This is based on the average hourly cost of salaries and benefits of NCUA staff. Finally, the amendments imposed interest charges on the delinquent payments as authorized under 31 U.S.C. 3717. Federal agencies are authorized under 31 U.S.C. 3717 to charge interest on outstanding claims at the average investment rate for Treasury tax and loan accounts. Interest will accrue from the date the payment is due; however, credit unions have a thirty-day grace period before the interest will be charged. The interest rate effective for 1990 payments is 9% (see 54 FR 45886 (10/31/89)).

Comments

Sixteen comment letters were received on the proposed amendments. Eleven of the comments were from Federal credit unions, two were from state-chartered credit unions, two were from national credit union trade associations, and one was from a state credit union league. All of the commenters except one were very supportive of the proposed rule. Only one commenter was opposed to a fee for late payment. The others agreed that a fee was justified and necessary and that all credit unions should not suffer for a few that pay late.

Some commenters suggested high fees, up to as much as $1000 for a late payment. Two commenters believe that credit unions should have one month's notice of the operating and insurance fees due before late charges are imposed. It has been agency policy to send out invoices one month before payments are due. A few commenters noted that NCUA should be flexible and aware of honest errors that credit unions may make in submitting payments.

In consideration of the last comment mentioned above, and further NCUA review, the proposed amendments to §§ 701.6(d) and 741.9(k) have been modified slightly in the final rule. The clause "unless delinquent payment is due to circumstances beyond the control of the credit union" has been removed from each section and replaced with the sentence "The National Credit Union Administration may waive or abate charges or collection of interest if circumstances warrant." Except for these changes, the Board is issuing the assessment rule in final form as it was proposed. The assessment authority will

be delegated by the NCUA Board to the Regional Director who will be instructed to maintain flexibility in imposing the assessments.

Effective Date

Although rules are generally issued with a 30-day delayed effective date, the Board is making this rule effective upon publication in the **Federal Register**. Annual credit union payments are due on January 19. In light of the positive comments and the practicality of being able to implement the assessments in 1990 based on the January due date, the Board believes that the rule should be made effective upon publication. All federally-insured credit unions have been given notice of the possibility of late fee assessments with the invoices that have been sent to them.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that these amendments will not have a significant economic impact on a substantial number of small credit unions, primarily those under $1 million in assets. The reasons for this determination are that the administrative fee to be charged all credit unions irrespective of the amount due is not large and will not create a financial burden for the smaller credit unions. Further, the assessment of interest provides a built-in sliding scale because interest will be charged on the amount owing which is smaller for smaller credit unions. This rule will not create any significant or disproportionate demands for legal, accounting, or consulting expenditures. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

The change to § 741.9 applies to both Federal credit unions and federally-insured, state-chartered credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the amendments will not have a substantial direct effect 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. Further, the rule will not preempt provisions of state law or regulation. As noted above, the Board believes that costs should be charged to delinquent credit unions rather than to all credit unions.

List of Subjects in 12 CFR Parts 701 and 741

Credit unions, Insurance requirements, Late fees.

By the National Credit Union Administration Board on January 11, 1990.

Rebecca Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. 101–73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 3601–3610.

2. Section 701.6(d) is added to read as follows:

§ 701.6 Fees paid by Federal credit unions.

* * * * *

(d) *Assessment of Administrative Fee and Interest for Delinquent Payment.* Each Federal credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is postmarked later than the date stated in the notice to the credit union provided under § 701.6(c). The National Credit Union Administration may waive or abate charges or collection of interest if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount fixed from time to time by the National Credit Union Administration Board and based upon the administrative costs of such delinquent payments to the Administration in the preceding year.

(2) The costs of collection shall be the actual hours expended by Administration personnel multiplied by the average hourly salary and benefits costs of such personnel as determined by the National Credit Union Administration Board.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

(4) If a credit union makes a combined payment of its operating fee and its share insurance deposit as provided in § 741.9 and such payment is delinquent, only one administrative fee will be charged and interest will be charged on the total combined payment.

3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790, and Pub. Law 101–73. Section 741.9 is also authorized by 31 U.S.C. 3717.

4. Section 741.9(k) is added to read as follows:

§ 741.9 Insurance premium and one percent deposit.

* * * * *

(k) *Assessment of Administrative Fee and Interest for Delinquent Payment.* Each federally-insured credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The National Credit Union Administration may waive or abate charges or collection of interest if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the National Credit Union Administration Board based upon the administrative costs of such delinquent payments to the Administration in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by Administration personnel multiplied by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

[FR Doc. 90–1155 Filed 1–18–90; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–130–AD; Amdt. 39–6481]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections for corrosion and cracking in the area of the rear pressure bulkhead, and repair, if

necessary. This amendment is prompted by reports of corrosion and cracking in the various components associated with the rear pressure bulkhead. This condition, if not corrected, could lead to reduced structural capability of the fuselage and subsequent decompression of the airplane.

EFFECTIVE DATE: February 23, 1990.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections for corrosion and cracking in the area of the rear pressure bulkhead, and removal of corrosion and repair of cracks, if necessary, was published in the **Federal Register** on September 11, 1989 (54 FR 37472).

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

One commenter suggested that the proposed inspection of toilet pipe couplings be deleted from the rule since it is not an airworthiness item. The FAA does not agree. Fluids seeping from cracks in the toilet system pipe couplings in the vicinity of the rear pressure bulkhead can contribute to corrosion of the rear pressure bulkhead.

One commenter recommended that paragraph D.2.a., be written, "accummulated more than 22,000 landings," rather than, "accummulated 26,000 landings or fewer." The FAA does not concur. The effect of the requested revision would be to exempt from the requirements of paragraph D.2.a., aircraft that have accumulated 22,000 or fewer landings as of the effective of the AD. The FAA is unaware of any basis for distinguishing among airplanes based on the number of landings accumulated as of the effective date. Rather, since the unsafe condition addressed by this AD is caused by fatigue, this unsafe condition is likely to exist or develop on all airplanes upon the accumulation of the specified number of landings, regardless of whether they accumulate them before or after the effective date.

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

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 44 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $116,160.

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

For the reasons discussed above, 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; Febraury 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

Airbus Industrie: Applies to Model A300 series airplanes, certificated in any category: Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. 1. Within the time limits specified in paragraph A.2., below, conduct the following inspections in accordance with Airbus Industrie Service Bulletin A300–53–217, Revision 1, dated March 6, 1989:

a. Perform a visual inspection and non-destructive testing (NDT) for cracking and corrosion of the lower rim area of the rear pressure bulkhead, forward and aft faces, including skin panels, circumferential joint doublers, stringers attachment fittings, cleat profile, Frame 80, attachment angles, circumferential strap, radial stiffeners, bonding points, and attach brackets of support struts between Stringer 27 left-hand (LH) and right-hand (RH).

b. Perform a visual inspection for cracking and corrosion of the drain and toilet system pipe couplings in the vicinity of the rear pressure bulkhead.

2. a. For airplanes whose first flight was less than 7 years ago as of the effective date of this AD, perform the initial inspection required by paragraph A.1., above, within 6 months after achieving 7 years since first flight, or within 6 months after the effective date of this AD, whichever occurs later.

b. For airplanes whose first flight was more than 7 years ago as of the effective date of this AD, perform the initial inspections required by paragraph A.1., above, within 6 months after the effective date of this AD.

B. If no corrosion or cracking is found as a result of the inspections required by paragraph A., above, perform repetitive inspections as follows:

1. Repeat the visual inspections at intervals not to exceed 3 years.

2. Repeat the NDT inspection at intervals not to exceed 8,000 landings.

3. If the modification specified in Airbus Industrie Service Bulletin A300–53–226 Revision 3, dated July 10, 1989, has been accomplished:

a. Repeat the visual inspection at intervals not to exceed 5 years.

b. Repeat the NDT inspections at intervals not to exceed 8,000 landings.

C. If cracking or corrosion is found as a result of the inspections required by paragraph A. or B., above, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–217, Revision 1, dated March 6, 1989.

D. 1. Within the time limits specified in paragraph D.2., below, conduct the following inspections in accordance with Airbus Industrie Service Bulletin A300–53–218, Revision 1, dated July 28, 1989:

a. Perform an X-ray inspection for cracking of the rim area of the rear pressure bulkhead, in the area of Stringer 21 LH and RH.

b. Perform a visual inspection for corrosion and cracking of the upper rim area of the rear pressure bulkhead from the aft face.

c. Perform an eddy current inspection for cracks from the outboard side in the following areas:

(1) For airplanes, manufacturer's serial number (MSN) 002 through 008: between Stringer 25 LH and RH.

(2) For airplanes, MSN 009 through 305: between Stringer 26 LH and RH.

d. Perform a visual inspection for cracks and corrosion of the service apertures in the rear pressure bulkhead.

e. Perform an eddy current inspection for cracks of the apertures for the auxiliary power unit (APU) bleed-air and fuel.

2. a. For airplanes having accumulated 26,000 landings or fewer as of the effective date of this AD, perform the initial inspections required by paragraph D.1., above, prior to the accumulation of 24,000 landings or within 2,000 landings after the effective date of this AD, whichever occurs later.

b. For airplanes having accumulated more than 26,000 landings as of the effective date of this AD, perform the initial inspections required by paragraph D.1., above, within 1,000 landings after the effective date of this AD.

E. If no cracking or corrosion is found as a a result of the inspections required by paragraph D., above, perform repetitive inspections as follows:

1. Repeat the X-ray inspection of the rim area of the pressure bulkhead at Stringer 21 LH and RH at intervals not to exceed 4 years.

2. Repeat the visual inspections of the upper rim area at intervals not to exceed 8,000 landings.

3. Repeat the eddy current inspection from the outboard side between Stringer 25 LH and RH, or Stringer 26 LH and RH, as appropriate, at intervals not to exceed 8,000 landings.

4. Repeat the visual inspection of the service apertures at intervals not to exceed 6,000 landings.

5. Repeat eddy current inspections of APU fuel apertures at intervals not to exceed 6,000 landings.

6. Repeat the eddy current inspection of the APU bleed air line service aperture at intervals not to exceed 12,000 landings.

F. If cracking or corrosion is found as a result of the inspections required by paragraph D. or E., above, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-218, Revision 1, dated July 28, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

H. 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 Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 23, 1990.

Issued in Seattle, Washington, on January 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-1230 Filed 1-18-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-193-AD; Amdt. 39-6480]

Airworthiness Directives; Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Avions Marcel Dassault-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, which requires repetitive functional testing of the main landing gear (MLG) door manual release system, and replacement of the MLG door manual release system bell crank, if necessary. This amendment is prompted by a report that the main gear door manual release system may not properly release when needed due to rigging interference. This condition, if not corrected, could prevent manual extension of the main landing gear.

EFFECTIVE DATE: February 23, 1990.

ADDRESSES: The applicable service information may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Avions Marcel Dassualt-Breguet Aviation (AMD-BA) Model Mystere Falcon 50 and 900 series airplanes, which requires a one-time functional test of the main landing gear (MLG) door manual release system, and replacement of the MLG door manual release system control bell crank, was published in the **Federal Register** on October 3, 1989 (54 FR 40672).

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

The commenter agreed with paragraph A. of the proposed rule, which would require a functional test of the main landing gear (MLG) emergency release mechanism. However, the commenter disagreed with paragraph B., which would require replacement of the MLG manual release system control bell crank, even if a malfunction does not occur while performing the functional test performed in accordance with paragraph A. The commenter stated that, after conducting a survey of significant portions of the Falcon 50 and 900 fleets, a very small number of airplanes required replacement of the bell crank. The commenter also stated that parts will not be available to support replacing all bell cranks within the proposed 180-day compliance time. The commenter suggested that if the functional test is successful, the operator should be able to continue to operate the airplane until the next "B" check, whereupon the functional test would be repeated. The FAA infers from this comment that the commenter is suggesting the rule be revised by requiring an initial functional test followed by repetitive tests, with the replacement of the bell crank being mandatory only in the event the functional test is unsuccessful. The FAA concurs. In most cases, repetitive inspections do not provide the same level of safety as can be obtained by incorporating a modification which precludes the necessity for the inspections. However, in this specific case, the FAA has determined, based on a review of the available data and a review of the design which incorporates

the adjustable bell crank, that repetitive inspections will provide an acceptable level of safety. Incorporation of an adjustable bell crank for a nonadjustable part is not warranted when the system is operating properly. Continuing to perform a functional test at "B" check intervals will ensure that, should the MLG emergency release system get out of adjustment, the required modification will be performed in an acceptably short time. Accordingly, the final rule has been revised to provide for optional repetitive inspections at 1,300 hours time-in-service intervals, which is commensurate with the operators' "B" check. Additionally, paragraph B. of the final rule allows for an optional terminating action for the repetitive functional tests of the MLG door manual release system control bell crank when replaced with an adjustable bell crank.

The commenter also stated that, in the economic evaluation in the preamble of the proposed rule, the FAA stated that the parts would be furnished by the manufacturer at no charge. This is not correct; the adjustable bell crank will be supplied to the operator at a cost of $3,644.76 per airplane. Since the FAA is not mandating the modification, the sentence referring to "required parts" costs has been removed from the economic analysis.

The commenter also noted that the "Summary" section of the proposed rule, stated that the AD is applicable to "certain" AMD–BA Falcon 50 and 900 aircraft. The commenter suggested that the word "certain" should be replaced by "all." The FAA agrees with this comment, and the final rule has been changed to reflect this determination.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above. The FAA has determined that these changes will neither increase the economic burden on any operation nor increase the scope of the AD.

It is estimated that 171 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,680.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and 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 transporation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

Avions Marcel Dassault-Breguet Aviation (AMD–BA): Applies to all Model Mystere Falcon 50 and 900 series airplanes, as listed in AMD–BA Alert Service Bulletins F50–A212 (F50–A32–19) and F900–A32–6), both dated July 25, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inability to manually open the main landing gear (MLG) door for MLG emergency extension, accomplish the following:

A. Within 30 days after the effective date of this AD, verify the integrity of the MLG emergency release system by accomplishing a functional test in accordance with AMB–BA Alert Service Bulletin F50–A212 or F900–A65 (as applicable), both dated July 25, 1989.

1. If door release does not occur, prior to further flight, replace the MLG door manual release system control bell crank with an adjustable bell crank, in accordance with the appropriate service bulletin.

2. If door release normally, accomplish one of the following:

a. Within 180 days or 1,300 hours time-in-service after the effective date of this AD, whichever occurs later, replace the MLG door manual release system control bell crank with an adjustable bell crank, in accordance with AMD–BA Alert Service Bulletin F50–A212 or F900–A65 (as applicable), both dated July 25, 1989; or

b. At intervals not to exceed 1,300 hours time-in-service, repeat the functional test.

B. Replacement of the MLG door manual release system control bell crank with an adjustable bell crank, in accordance with AMD–BA Alert Service Bulletin F50–A212 or F900–A65 (as applicable), both dated July 25, 1989, constitutes terminating action for the functional tests required by paragraph A., above.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then sent it to the Manager, Standardization Branch, ANM–113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base 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 Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. These documents may be examained at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 23, 1990.

Issued in Seattle, Washington, on January 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 90–1229 Filed 1–18–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–107–AD; Amdt. 39–6484]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 747

series airplanes, which currently requires frequent inspections of the forward end of the Model 747 flap tracks for cracks emanating from fail-safe bar fastener holes until these holes are verified to be corrosion free. This condition, if not corrected, could lead to separation of the flap from the airplane and partial loss of controllability of the airplane. This action requires modification of the fail-safe bar fastener holes to remove corrosion, tightens certain inspection requirements, and imposes a limitation on the use of flaps to 25 degrees or less.

EFFECTIVE DATE: February 23, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation regulations by revising AD 89–05–04, Amendment 39–6148 (54 FR 7759; February 23, 1989), applicable to Boeing Model 747 series airplanes, to require modification of the fail-safe bar fastener holes to remove corrosion, to tighten certain inspection requirements, and to impose a limitation on the use of flaps to 25 degrees or less, was published in the **Federal Register** on August 24, 1989 (54 FR 35196).

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

One commenter (a foreign operator) strongly opposed the proposed restriction on landing flaps for the following reasons:

1. During the 747 Aging Aircraft Task Force Structures Working Group discussions at the manufacturer's facility, it was stated that the flap track fatigue life is independent of the maximum landing flap setting.

2. The commenter's experience shows more hard landings occur when landings are made at the 25 degree flap setting.

3. In this commenter's airline operation, only captains are trained to perform 25 degree flap landings. Landings at the 25 degree flap setting are especially difficult at CAT II and on certain U.S. short runways.

Additionally, another commenter objected to the restriction because 30 degrees of flap operation may be necessary in special or off-line operations. This commenter stated that the modification should remove fatigue damage to the flap tracks and the restriction should not be necessary.

The FAA does not concur that flap track fatigue life is independent of the maximum flap setting. The stress levels in the flap track are lower at 25 degree flaps than at 30; therefore, better life can be expected if flaps are limited to 25 degrees. More significant, however, is the effect that the lower stress levels can be expected to have on stress corrosion cracking, which has been the cause of the cracking in the flap track. Damage growth due to stress corrosion can be expected to be considerably slower or eliminated at the lower stress levels.

The FAA does not concur that hard landings are more likely at the 25 degree flap setting. The FAA pilots' experience has been that hard landings are not more likely at the 25 degree flap setting, and, in fact in some respects landing at 25 degree flaps is easier than at 30. The FAA notes that some operators have always limited operation of their Model 747's to the 25 degree flap setting and virtually all U.S. Model 747 operators are now operating with a restriction to 25 degree flaps. The FAA considers that this particular commenter's experience, showing more hard landings at the 25 degree flap setting, may stem from lack of experience of the commenter's pilots in conducting 25 degree flap landings, because that flap setting is used so infrequently. Once the commenter's pilots become accustomed to the flaps 25 degree landing operation, the number of hard landings should be no higher than the number for flaps 30 degree landings today. The 6-month compliance time for incorporation of the limitation will allow adequate time for any pilot training deemed necessary.

With regard to the comment on the difficulty of CAT II landings and landings on certain U.S. short runways, the FAA would point out that the certified safe runway lengths for the Model 747 for 25 degree flap landings are specified in the Airplane Flight Manual, and these are considered adequate.

Therefore, the FAA has retained the provision in the rule to restrict the use of landing flaps to 25 degrees until later, more durable, design flap tracks are installed.

Several commenters pointed out that the proposed initial compliance time of 150 landings for the inspection of the flap track webs, as required by paragraph L., is not warranted because bolt locations 5 through 10 should already be receiving a visual check because of their proximity to areas of the track already being inspected at a 300 landing interval, as required by the existing AD. These commenters recommended that the compliance time be extended to 300 landings so that the new inspection can be performed at the same time as the next inspection for the adjacent area. The FAA concurs and has determined that this change will not adversely impact safety. The final rule has been revised accordingly.

One commenter requested that modification of the bolt holes proposed in paragraph M. be required only if the bolt holes are corroded. This commenter pointed out that the modification is merely a hole oversizing operation to remove corrosion, and it should be required only if corrosion is present. The FAA does not concur. Although the FAA agrees that the intent of the modification is to remove corrosion from the hole, experience with inspections for corrosion in these holes indicates that it is often difficult to detect corrosion although it is present. Therefore, modification of all holes, whether or not corrosion is detected, is necessary to ensure that all holes are free from corrosion.

Several commenters stated that the 6-month compliance time for completion of the modification proposed in paragraph M. is too short. Uncertainty in the availability of tooling and the difficulty in accomplishing the modification were cited as the reasons for requesting the extension of the compliance time. A compliance time of 9 months was suggested. The FAA concurs, since this still meets the FAA's objective of ensuring that the modification is accomplished fleet-wide at the earliest practical date. Meanwhile, the holes are subject to repetitive inspections. The final rule has been revised to increase the compliance time for the modification from 6 to 9 months after the effective date of this AD.

One commenter requested that the AD be updated to reference the most recent versions of approved service bulletins, and also to reflect any earlier versions of service bulletins which contain acceptable alternate methods or tasks. The FAA concurs. Since the issuance of the NPRM, the FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated

November 2, 1989, which clarifies modification instructions for the fail-safe bar fastener holes. The FAA has revised the final rule to include Revision 9 as an acceptable service information source. Additionally, the AD has been revised to reference earlier service bulletin revisions which contain acceptable alternate inspections or tasks.

One commenter suggested that the visual inspections proposed in paragraph L. could be supplemented by ultrasonic inspections, as now required for adjacent areas. The commenter stated that this inspection would improve crack detection reliability and would not impose a significant additional burden on operators. Although the FAA agrees with this comment, such ultrasonic inspection procedures for the area have not yet been developed to date. Further, to add such a requirement would be beyond the scope of this rulemaking activity.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will not increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 240 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 296 manhours per airplane to accomplish the required action and that the average labor cost will be $40 per manhour. The cost of tooling is estimated to be $8,000 per airplane, based on the manufacturer's quoted rental charges for the tool kit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,480,000.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 amending AD 89–05–04, Amendment 39–6148 (54 FR 7759; February 23, 1989), as follows:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, certificated in any category, that have reworked or interim production flap tracks (part numbers identified in the service bulletin). Compliance required as indicated, unless previously accomplished.

To preclude additional flap track failures, accomplish the following:

A. Accomplish either paragraph A.1. or A.2., below according to the compliance schedule indicated.

1. Accomplish A.1.a. through A.1.c., below:

a. Within five landings after March 8, 1989, (the effective date of Amendment 39–6148), revise the limitations section of the FAA-approved Airplane Flight Manual (AFM) by adding the following instructions. This may be accomplished by inserting a copy of this AD into the AFM:

"Landing Flaps: Maximum landing flaps shall not exceed 25 degrees, unless deemed necessary for safe operation by the pilot. The pilot shall document each use of 30 degree flaps in the airplane log book."

b. Within 15 landings after March 8, 1989, and thereafter at intervals not to exceed 15 landings, until paragraph B.2., below, is accomplished on the affected tracks, perform a close visual inspection of both sides of each flap track for cracks emanating from the first four fail-safe bar fastener holes of flap track numbers 1, 3, 6, and 8 (Borescope inspections, conducted in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989, or through the access hole in the forward end fairing, are acceptable).

c. Within 10 landings after any use of 30 degree flaps, conduct the inspection specified in paragraph A.1.b., above.

2. Within 15 landings after March 8, 1989, and thereafter at intervals not to exceed 5 landings, until paragraph B.2., below, is accomplished on the affected track, perform a close visual inspection of both sides of each flap track for cracks emanating from the first four fail-safe bar fastener holes on each side of flap track numbers 1, 3, 6, and 8 (eight holes per track). (Borescope inspections, conducted in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989, or through the access hole in the forward end fairing, are acceptable.)

Note: Although 30 degrees flaps are not prohibited in complying with paragraph A.2., it is recommended that 25 degree flaps be used whenever possible.

B. Within 75 landings after March 8, 1989 (the effective date of Amendment 39–6148), remove the bolts from the first four fail-safe bar fastener holes on each side of the track (eight per track) of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting) and accomplish B.1. or B.2., below:

1. Inspect fastener holes for cracks, in accordance with the eddy current procedures identified in Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989. If no cracks are found, prior to further flight, apply an organic corrosion inhibitor (LPS–3 or equivalent) to the fastener hole and reinstall serviceable fasteners using corrosion inhibiting grease. Repeat at intervals not to exceed 75 landings.

2. Verify that fastener holes are:

a. Corrosion-free, by using magnifying borescope inspection procedures described in the enclosure to Boeing Letter B–22IT–89–247, dated January 24, 1989, entitled "Borescope Inspection of Flap Track Holes," and

b. Crack-free, by using eddy current inspection procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989.

Repeat these inspections at intervals not to exceed 1,500 landings. Bolts are to be reinstalled as noted in paragraph B.1., above. Verification that fastener holes are crack-free and corrosion-free constitutes terminating action for the requirements of paragraph A., above, for that track. Any track, which on subsequent inspection is found to have developed corrosion in a fastener hole, must be inspected in accordance with paragraphs A. and B.1., above, until the condition is corrected.

C. For tracks inspected in accordance with paragraph B.2., above, within 300 landings after tracks have been found to be crack-free and corrosion-free, and at intervals thereafter not to exceed 300 landings, perform an ultrasonic and close detailed visual inspection of both sides of the forward end of each track for cracks, with the fairing removed, in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989.

D. Within 150 landings after March 8, 1989 (the effective date of Amendment 39–6148), unless accomplished within the last 150

landings, and thereafter at intervals not to exceed 300 landings, remove the fairing from the forward end of flap tracks number 4 and 5 with spliced-in end fitting, and perform an ultrasonic and close detailed visual inspection of both sides of the forward end of each track for cracks, in accordance with the inspection procedures described in Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989.

E. Within the next 50 landings after August 15, 1988 (the effective date of AD 88–16–03, Amendment 39–5985), unless accomplished within the past 950 landings, and thereafter at intervals not to exceed 1,000 landings, visually inspect numbers 1 through 8 flap track webs for cracks extending from all fastener holes not inspected in accordance with the requirements of paragraphs A., B., C., or D., above, or paragraph L., below. These visual inspections must be accomplished in accordance with the procedures described in Boeing Service Bulletin 747–57–2146, Revision 4, dated August 25, 1988.

F. Cracked tracks must be replaced or reworked prior to further flight in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989, or Boeing Service Bulletin 747–57–2146, Revision 4, dated August 25, 1988.

G. Tracks which have had any of the first four fail-safe bar fastener holes reworked in accordance with Boeing Alert Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or in accordance with any other procedure approved by the FAA, are subject to the requirements of paragraph A. and B.1, above, until compliance with paragraph B.2, above, is established.

H. Carriage of fifth engine is not permitted unless a close visual inspection, described in paragraphs A.1.b. or A.2., above, is conducted prior to the flight.

I. Replacement of any flap track with a flap track approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, constitutes terminating action for the inspection requirements of this AD for that flap track.

J. 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.

K. 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.

L. Within 300 landings after the effective date of this amendment, and thereafter at intervals not to exceed 300 landings, remove the fairing from the forward end of the flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting) and visually inspect the flap track webs for cracks extending from the fifth through the tenth most-forward fail-safe bar fastener holes on each side of the track. These visual inspections must be accomplished in accordance with the procedures described in Boeing Service Bulletin 747–57–2146, Revision 4, dated August 25, 1988.

M. Within the next 9 months after the effective date of this amendment accomplish the following on the first four fail-safe bar fastener holes on each side of the track (eight per track) of flap track numbers 1 through 8 (except tracks 4 and 5 with a spliced-in end fitting):

1. Modify the fastener holes in accordance with Boeing Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989.

2. Verify that modified fastener holes are crack-free and corrosion-free in accordance with paragraph B.2., above.

(Note: Modification of the fastener holes does not terminate the repetitive inspection requirements of paragraph B.2.)

N. For airplanes on which the first four flap track fail-safe bar fastener holes have been verified to be corrosion-free in accordance with paragraph B.2. of this AD, within 6 months after the effective date of this amendment, and until reworked and interim production flap tracks are replaced with more durable later design flap tracks in accordance with Boeing Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989, revise the Limitations Section of the Airplane Flight Manual (AFM) by adding the following instructions:

"*Landing Flaps:* Maximum landing flaps shall not exceed 25 degrees, unless deemed necessary for safe operation by the pilot."

Note: In complying with paragraphs A. through D. and paragraph N. only, above, Boeing Service Bulletin 747–57A2229, Revision 7, dated October 13, 1988, or Revision 8, dated January 31, 1989, may be used in lieu of Boeing Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989.

In complying with paragraph M., above, Boeing Service Bulletin 747–57A2229, Revision 8, dated January 31, 1989, may be used in lieu of Boeing Service Bulletin 747–57A2229, Revision 9, dated November 2, 1989. In complying with paragraphs E., F., and L., above, Boeing Service Bulletin 747–57–2146, Revision 3, dated May 9, 1986, may be used in lieu of Boeing Service Bulletin 757–57–2146, Revision 4, dated August 25, 1988.

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, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39–6148, AD 89–05–04.

This amendment becomes effective February 23, 1990.

Issued in Seattle, Washington, on January 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1232 Filed 1–18–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–113–AD; Amdt. 39–6475]

Airworthiness Directives; SAAB-Scania Model SF–340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF–340A and SAAB 340B series airplanes, which requires inspection of the AC generators for modification status, and replacement of the AC generators, if necessary. This amendment is prompted by numerous reports of AC generator bearing failure. This condition, if not corrected, could result in the loss of ice protection for the engine inlet; and, when combined with the loss of the other AC generator output, could result in the loss of ice protection for both engine inlets, windshield, pitot systems, alpha systems, and propellers.

EFFECTIVE DATE: February 20, 1990.

ADDRESSES: The applicable service information may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113; telephone (206) 431–1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain SAAB-Scania Model SF–340A and SAAB 340B series airplanes, which requires inspection of the AC generators for modification status, and replacement of AC generators, if necessary, was

published in the Federal Register on November 3, 1989 (54 FR 46404).

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

The commenters supported the rule, but noted that the 30-day compliance time, which was specified in the original NPRM, did not appear in the Supplemental NPRM. The FAA concurs. Since the 30-day compliance time was inadvertently omitted in the published Supplemental NPRM, the final rule is clarified to specify the 30-day compliance period, as it appeared in the original NPRM.

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

It is estimated that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,960.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and 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.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 as follows:

Saab-Scania: Applies to Model SF–340A and SAAB 340B series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent the loss of certain ice protection systems due to AC generator failures, accomplish the following:

A. Inspect the AC generators, P/N 31342–001, for the modification status.

1. If the modification status blocks are X-stamped in the D (or later) modification status block, no further action is required.

2. If the modification status blocks are X-stamped in the A, B, or C modification status block, prior to further flight, replace the AC generator with one X-stamped in the D (or later) modification status block, in accordance with SAAB Service Bulletin SF340–24–016, Revision 1, dated August 28, 1989.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base 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 SAAB-Scania AB, Product Support, S–581.99 Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 20, 1990.

Issued in Seattle, Washington, on January 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1231 Filed 1–18–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 89–ASO–34]

Establishment of Restricted Area R–7105; PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Restricted Area R–7105 located in the vicinity of Lajas, PR. The restricted area is necessary to provide airspace to contain an aerostat radar surveillance (ASR) system for drug interdiction purposes. This action is in support of a project linked to the Customs Service Southern Border Drug Interdiction Strategy.

EFFECTIVE DATE: 0901 u.t.c., March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On August 23, 1989, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R–7105 located in the vicinity of Lajas, PR (54 FR 35003). The restricted area is required to provide the necessary airspace to activate an ASR system for drug interdiction purposes. This project is part of the Customs Service Southern Border Drug Interdiction Strategy. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.71 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area R–7105 located in the vicinity of Lajas, PR. The restricted area is necessary to provide airspace to contain an ASR system for drug interdiction purposes. This action is in support of a project linked to the Customs Service Southern Border Drug Interdiction Strategy.

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

Environmental Analysis

An environmental assessment of the rule adopted and a finding of No Significant Impact have been placed in the rules docket. This amendment does not alter the conclusions in that document.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.71 [Amended]

2. Section 73.71 is amended as follows:

R-7105 Lajas, PR [New]

Boundaries. That airspace within a 3-nautical-mile radius centered on lat. 17°58'45" N., long. 67°04'55" W.
Designated altitudes. Surface to and including 15,000 feet MSL.
Times of designation. Continuous.
Controlling agency. FAA, San Juan CERAP.
Using agency. Puerto Rico Police Department.

Issued in Washington, DC, on January 10, 1990.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 90-1234 Filed 1-18-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM87-5-001]

18 CFR Part 250

Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines; Correction

Issued January 12, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on rehearing, erratum notice.

SUMMARY: The Commission is making two technical amendments to the regulatory text in Order No. 497-A, an order on rehearing, issued on December 15, 1989 (54 FR 52,781 (Dec. 22, 1989)). First, the instructions to the Federal Register for making changes in the regulatory text of Order No. 497-A were unclear. In this notice, the Commission is revising the regulatory text of ordering paragraph 6 of Order No. 497-A and providing corrected regulatory text.

Second, the order on rehearing established an additional reporting requirement in the transportation log. This requirement was included in the regulatory text at § 250.16(b)(2)(xx). However, in a subsequent provision on when the transportation log material is to be filed, in § 250.16(d)(4)(i), the new reporting requirement was inadvertently omitted as a cross-reference to the earlier provision. This notice corrects the reporting requirements by adding the cross-reference to the new reporting requirement in the appropriate provision.

EFFECTIVE DATE: January 12, 1990.

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

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

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this technical amendment will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 1000, 825 North Capitol Street NE., Washington, DC 20426

On December 15, 1989, the Federal Energy Regulatory Commission (Commission) issued an order on rehearing in this proceeding (54 FR 52,781 (Dec. 22, 1989)). The Commission is making two technical amendments in that order. First, in the order on rehearing, the Commission inter alia revised § 250.16 of the regulations to separate the tariff and nontariff reporting requirements and to clarify what was to be included in each. However, the instructions for making these changes in the regulatory text of Order No. 497-A were unclear.[1] The Commission is revising ordering paragraph 6 in the regulatory text of Order No. 497-A and providing corrected regulatory text.

Second, the order on rehearing established an additional reporting requirement in the transportation log. This requirement was included in the regulatory text at § 250.16(b)(2)(xx). However, in a subsequent provision on when the transportation log material was to be filed, in § 250.16(d)(4)(i), the new reporting requirement was inadvertently omitted as a cross-reference to the earlier provision. The Commission is correcting the reporting requirements listed in § 250.16(d)(4)(i) to include the cross-reference to this new reporting requirement.

Lois D. Cashell,

Secretary.

PART 250—FORMS

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142;

[1] These ordering instructions inform the Federal Register editors how to revise the regulations to incorporate the changes approved by the Commission in Order No. 497-A. The original ordering instructions in paragraph 6 attempted to make a piecemeal change to paragraph (b) in § 250.116. These instructions failed to instruct the Federal Register to remove certain paragraphs such that, absent this erratum notice, those paragraphs would appear twice instead of once.

Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

(2.) In § 250.16, paragraphs (a), (b), (c), (d), (e)(2), (g), and (h)(1) are revised to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The date of receipt of the request,

(ii) The date that the request was accepted as valid,

(iii) The specific affiliation of the requester with the interstate pipeline, and the extent of the pipeline's affiliation, if any, with the person to be provided transportation service,

(iv) The extent of the supplier's affiliation with the interstate pipeline from whom service is requested,

(v) The identity of the shipper making the request for service including designating whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end-user, a producer, or a marketer,

(vi) The maximum daily contract volume of gas requested to be transported and the total contract volume of gas requested to be transported over the life of the contract,

(vii) The producing area of the source of the gas requested to be transported,

(viii) The date service is requested to commence and terminate,

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

(x) Whether the service requested is firm or interruptible,

(xi) The state of the ultimate end user of the gas,

(xii) The identity of the transportation rate schedules and the transportation rates applicable for such service,

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

(xiv) Whether and by how much the cost of the gas to the affiliated marketer exceeds the price received for the sale of the gas by the affiliated marketer, after deducting associated costs, including those incurred for transportation; *i.e.*, whether the gas is being sold at a loss,

(xv) Current status of the request, including whether the request is:

(A) Incomplete,

(B) Complete and awaiting service,

(C) Complete, a contract signed, and awaiting commencement of service,

(D) Complete, service has begun and the Commission docket number assigned to the transaction,

(E) Withdrawn, or

(F) Denied and the reason why,

(xvi) The position of the request in the transportation request queue,

(xvii) The disposition of the request, includng the date the requester was notified of availability of capacity, the date the contract was executed, the date service actually commenced, and any explanation concerning the disposition of the request,

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

(xix) Whether the transportation is being requested, offered or provided at discounted rates, duration of the discount requested, offered or provided, the maximum rate or fee, the rate or fee actually charged during the billing period, the shipper, corporate affiliation between the shipper and the transporting pipeline, and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point, and

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

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

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

(i) The Commission on request, and

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

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

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

(2) The information required in paragraph (b)(1) of this section must be filed quarterly if any changes occur.

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

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

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

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

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

* * * * *

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

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

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

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

(h) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to subparts B, G, H, or K of part 284 of this chapter and who knowingly violates the requirements of § 161.3, § 250.16, or § 284.13 of this chapter will be subject, pursuant to sections 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation.

* * * * *

[FR Doc. 90-1206 Filed 1-18-90; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 90-3]

Cultural Property

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

ACTION: Final rule.

SUMMARY: The United States may impose import restrictions on illegally exported archaeological or ethnological materials of other nations when officially requested by the country of origin pursuant to the Convention on Cultural Property Implementation Act. This document amends existing Customs Regulations by creating a new listing within the regulations which lists those Treasury Decisions which impose import restrictions on such foreign cultural property. Previously, when such restrictions were imposed, a Notice of the restrictions was published in the **Federal Register.** Each Notice was published separately, and no compilation of Notices was made. Because the frequency with which State Parties request protection for their cultural property is increasing, this amendment is being made to provide both the public and the Customs Service with a single location for all such import restrictions. Because this amendment constitutes a non-substantive change to agency procedure and neither imposes any new obligation on nor affects any rights of members of the public, public procedure and comment on the amendment are impracticable and unnecessary.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel Orandle, Commercial Rulings Division, U.S. Customs Service (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

In 1983, the United States enacted the "Convention on Cultural Property Implementation Act" (19 U.S.C. 2601 et seq.) which accepted the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). This legislation was intended to demonstrate U.S. leadership efforts in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankinds's common heritage.

After enactment of the Act, Customs issued interim regulations to carry out the policies of the Act. The interim regulations, which were set forth in § 12.104, Customs Regulations (19 CFR 12.104), were published in the **Federal Register** as T.D. 85-107 on June 25, 1985 (50 FR 26193), and took effect immediately. After consideration of comments received on the interim regulations, final regulations were issued as T.D. 86-52, published in the **Federal Register** on February 27, 1986 (51 FR 6905), and took effect on March 31, 1986.

Since that date, several countries have petitioned that the United States impose restrictions on cultural artifacts which were being exported from their country without permission of the national government. The Convention on Cultural Property Implementation Act sets forth the criteria and procedures for determining whether import restrictions should be imposed. The Customs Regulations apply after the determination to impose those restrictions has been made, and implement that determination.

Current Practice for Notice to Public

Members of the public currently receive official notice that a country has requested protection of its cultural artifacts when the United States Information Agency (USIA) publishes a Notice in the **Federal Register** that it has recieved such a request. That Notice also provides the public with the information on opportunities to present evidence or other matters to the Cultural Property Advisory Committee which will make recommendations regarding the desirability of imposing import restrictions to the USIA Director. The USIA Director makes the determination to impose restrictions in consultation with the Secretary of State and the Secretary of the Treasury. The USIA publishes a Notice of the determination, and if the decision is to impose restrictions, Customs publishes a Notice listing the types or categories of materials subject to restriction.

Although the Notice of the restriction has been published in the **Federal Register**, and reference to it has been made in an editor's note in the Code of Federal Regulations, there has been no separate, complete listing of either

countries or artifacts for which restrictions apply to which members of the public can refer.

Revised Procedure

A review of section 2604 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2604) has led the Customs Service to determine that the Act intended that such a listing be included within the Customs Regulations. To accomplish this, the existing regulations are being amended to add a paragraph which will contain a listing, by country, of cultural artifacts which are receiving protection under the Act. That list will also provide the number of the Treasury Decision (T.D.) which announced the restriction and amended the regulations. This paragraph will be further amended from time to time whenever additional import restrictions are imposed on cultural artifacts pursuant to the Act.

The Treasury Decisions will contain the full and sufficiently specific and precise descriptions of the articles to which the restrictions apply. Those T.D.s, which will be published in conjunction with the publication of the USIA determination, will provide fair notice to importers and other persons as to what material is subject to the restrictions.

Inapplicability of Notice and Delayed Effective Date

Because this amendment involves a non-substantive format change to the Customs Regulations, pursuant to section 553(b)(A) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is inappropriate.

Regulatory Flexibility Act

This document is not subject to the provisions 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.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Peter T. Lynch, 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 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

Part 12 of the Customs Regulations (19 CFR part 12), is amended as set forth below:

PART 12—[AMENDED]

1. The authority citation for part 12 is amended to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104–12.104i also issued under 19 U.S.C. 2612.

2. In § 12.104g, paragraph (b) is revised to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

* * * * *

(b) The following is a list of emergency actions imposing import restrictions on the described articles of cultural property of State Parties. The listed Treasury Decision contains a complete description of specific items or categories of archaeological or ethnological material designated by the emergency actions as coming under the protection of the Convention on Cultural Property Implementation Act. Import restrictions listed below shall be effective for no more than five years from the date on which the State Party requested those restrictions. This period may be extended for three more years if it is determined that the emergency condition continues to apply with respect to the archaeological or ethnological material. Any such extension is indicated in the listing.

State party	Cultural property	T.D. No.
El Salvador	Prehispanic archaeological objects from the Cara Sucia Archaeological Region.	87–10
Bolivia	Antique ceremonial textiles from Coroma.	89–37

Approved: December 19, 1989.

Michael H. Lane,

Acting Commissioner of Customs.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 90–1364 Filed 1–18–90; 8:45 am]

BILLING CODE 4820–02–M

RAILROAD RETIREMENT BOARD

20 CFR Part 327

RIN 3220–AA65

Available for Work

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends part 327 of its regulations under the Railroad Unemployment Insurance Act to clarify the meaning of the phrase "available for work" as used in section 1(k) of the Act (45 U.S.C. 351(k)).

EFFECTIVE DATE: January 19, 1990.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, (FTS 386–4513).

SUPPLEMENTARY INFORMATION: To receive unemployment benefits under the Railroad Unemployment Insurance Act (Act), an unemployed railroad employee must be available for work, that is, ready and willing to work (45 U.S.C. 351(k)). The Board hereby amends part 327 of its regulations to delineate certain contains under which an unemployed employee will be considered as not available for work and thus not eligible for benefits.

The Board published the amendments to part 327 as a proposed rule on August 3, 1989 (54 FR 31968–31970), and invited comments by September 5, 1989. No comments were received, and no changes were made in the proposed regulation.

Initially, the Board hereby amends § 327.10(a) to take into consideration the revisions made to part 325 of this chapter, which permits registration for unemployment benefits by mail. Under the mail-in procedure, upon receipt of a claim for unemployment benefits the Board will notify the claimant's base year employer. If, within a period of time prescribed by the Board, the employer presents no evidence regarding the claimant's availability for work, the claimant shall initially be considered to be available for work.

In addition, the Board hereby adds five new paragraphs to § 327.10 to further describe circumstances under which an employee would be considered not available for work.

New paragraph (d) provides that an employee who works fewer than five days a week but is continuously

employed from week to week under a schedule that provides the equivalent of full-time work shall not be considered to be available for work on his or her days off. Under the Act an individual may be paid benefits for days of unemployment, not to exceed 10, within a 14-day registration period. Four days of unemployment within a 14-day registration period are considered normal rest days, which are not compensable under the Act. Individuals who work compressed work weeks may have more than four rest days within a 14-day registration period but yet are essentially employed full-time. Under the final rule such individuals will not be considered as available for work on these additional rest days and would not receive benefits for these days.

The new paragraph (e) added to § 327.10 provides that an employee who voluntarily leaves work to attend school shall be presumed not available for work. It also provides guidance on determining availability for work in other cases where an employee is enrolled in a school or training course.

The new paragraph (f) provides that an employee in train and engine service who does not work on a day or days because he or she expects to work the maximum mileage permitted in a month under a work agreement is not considered available for work on such day or days.

New paragraph (g) provides that an individual in prison or jail or otherwise confined by a governmental unit shall not be considered available for work and thus not eligible for unemployment benefits. This includes an individual who has been released from confinement under a furlough program. An individual would not be considered as unavailable for work solely because he or she is out on bail awaiting trial or because he or she is on parole or probation after conviction for a crime.

New paragraph (h) provides that a train and engine service employee assigned to pool service will not be considered available for work on any day on which he or she would have worked if he or she had not missed his or her turn in pool service employment.

Finally, the Board hereby removes § 327.20, which provides that a claimant should not be considered unavailable for work simply because he or she was enrolled in training under the Manpower Development Training Act of 1962. Such training programs have expired and this section is thus obsolete.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 327

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II, part 327 of the Code of Federal Regulations is amended as follows:

PART 327—[Amended]

1. The authority citation for part 327 is revised to read as follows:

Authority: 45 U.S.C. 362(i), 362(l).

2. Section 327.1 is revised to read as follows:

§ 327.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. Under section 1(k) of the Act, an unemployed employee must be "available for work" as a condition of eligibility for unemployment benefits for any day claimed as a day of unemployment. This part defines the phrase "available for work" and explains how the Board will apply that phrase to claims for unemployment benefits.

3. Section 327.10 is amended by revising paragraph (a) and by adding new paragraphs (d) through (h) as follows:

§ 327.10 Consideration of availability.

(a) *Initial proof.* A claimant who registers for unemployment benefits in accordance with the provisions of part 325 of this chapter shall, absent any evidence to the contrary, initially be considered available for work. Evidence that a claimant may not be available for work shall include any evidence provided by the claimant's base year employer(s) pursuant to section 5(b) of the Railroad Unemployment Insurance Act.

* * * * *

(d) *Equivalent of full-time work.* (1) A claimant who is continuously employed from week to week under a work schedule that provides the equivalent of full-time employment shall not be considered available for work with respect to any rest day or other non-work day within a 14-day registration period.

(2) The application of paragraph (d) may be illustrated by the following examples:

Example (1): A claimant's regular work schedule requires him or her to work five nine-hour days one week followed by three nine-hour days and one eight-hour day in the next week. The claimant has five non-work days within this two-week period. The claimant is not considered available for work on those non-work days.

Example (2): On Monday an employee who has been working a shift which has Saturdays and Sundays off changes to a shift which normally has Wednesdays and Thursdays off. As a consequence, the employee has six non-work days within a 14-day period. The employee is not considered available for work with respect to any of the six non-work days.

Example (3): An employee regularly receives remuneration for 40 hours per week by working 10 hours on each of four days per week, thus giving him or her six rest days in a 14-day period. The employee will not be considered available for work on the rest days.

(e) *Attendance in school or training course.* (1) A claimant who has voluntarily left work to enroll as a student in an educational institution shall be presumed not to be available for work. For the purpose of this provision, leaving work is considered voluntary when the claimant on his or her own initiative left work that he or she could have continued to perform but for the claimant's decision to attend school. In all other cases, this presumption shall not apply, but eligibility shall instead be determined on the basis of the facts of each case. In each such case, the claimant shall be given an opportunity to establish that he or she remains ready and willing to engage in fulltime employment for hire, notwithstanding his or her school attendance. If a claimant is enrolled in a vocational training program at a trade or technical school, he or she shall be considered available for work if his or her current prospects for work are poor and the vocational training can reasonably be expected to increase his or her prospects for obtaining new employment.

(2) *Example.* The application of paragraph (e) may be illustrated by the following examples:

Example (1): An individual is laid off by his or her railroad employer. Instead of looking for other employment, the individual decides to enter college in order to become a teacher. He or she is enrolled as a full-time day student. The individual is not available for work.

Example (2): An employee is furloughed by his or her railroad employer and will not likely be able to return to railroad work. After making a reasonable effort to obtain work and finding none, the individual enrolls in a six-month course of training, which upon completion would permit him or her to obtain an entry level job in the data processing industry. The individual is considered available for work while training for the data processing job.

(f) *Failure to work in anticipation of maximum mileage.* (1) An employee in train and engine service who voluntarily lays off work in anticipation of reaching the maximum mileage or earnings permitted under an agreement with his

or her employer shall not be considered available for work.

(2) *Example.* Halfway through the month an engineer has worked in train service covering 2,000 miles. By agreement with his or her employer he or she may not operate a train in excess of 3,000 miles per month. In order to allow engineers with less seniority to perform service, the engineer lays off work for five days. The engineer is not considered available for work on those days.

(g) *Confinement.* A claimant who is confined in a penal institution or is in the custody of a Federal, State or local governmental unit or official thereof shall not be considered available for work. An individual shall not be considered in the custody of a governmental unit or official thereof if he or she has been released on bail and is awaiting trial or he or she has been placed on probation or parole. However, an individual who has been released from custody by a governmental unit or official thereof under a program that permits leave from custody of a short duration, after which he or she must return to custody, shall not be considered available for work on those days on which he or she is on furlough from confinement.

(h) *Missed turns in pool service.* A train and engine service employee assigned to pool service shall not be considered as ready to work, within the meaning of § 327.5(c) of this part, with respect to any day on which such employee would have worked if he or she had not missed his or her turn in pool service employment.

§ 327.15 [Amended]

4. Section 327.15, Reasonable efforts to obtain work, is amended by substituting in paragraph (a) thereof "§ 325.3" for "§ 325.13".

§ 327.20 [Removed]

5. Section 327.20, Training pursuant to Public Law 87–415, is hereby removed.

Dated: January 9, 1990.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–1249 Filed 1–18–90; 8:45 am]

BILLING CODE 7905–01–M

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20 CFR Part 332

RIN 3220–AA76

Mileage or Work Restrictions and Stand-By or Lay-Over Rules

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends part 332 of its regulations to redefine what is meant by the phrase "equivalent of full-time work" for railroad train and engine service employees who do not have regular assignments. The non-work days of an employee who has the equivalent of full-time work are not considered to be "days of unemployment" for which benefits otherwise might be payable under the provisions of section 2(a) of the Railroad Unemployment Insurance Act.

EFFECTIVE DATE: January 19, 1990.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513).

SUPPLEMENTARY INFORMATION: Part 332 of the Board's regulations relates to the eligibility for unemployment benefits of railroad employees in train and engine service and other similar types of service who work under collective bargaining agreements that impose work restrictions and stand-by or lay-over rules. Part 332 is based upon the third proviso of section 1(k) of the Railroad Unemployment Insurance Act. Section 1(k) defines what is meant by the phrase "day of unemployment" and provides, in part, that a day of unemployment means a calendar day with respect to which no remuneration, as defined in section 1(j) of the Act, is payable or accrues to the employee. However, under the third proviso of section 1(k), if no remuneration is payable or accrues to an employee for any calendar day solely because of the application to the employee of mileage or work restrictions agreed upon in schedule agreements between employers and employees or solely because the employee is standing by for or laying over between regularly assigned trips or tours of duty, such calendar day shall not be considered as a day of unemployment for such employee.

The Board published the amendments to part 332 as a proposed rule on September 6, 1989 (54 FR 37007–37008), and invited comments by October 6, 1989. No comments were received, and no changes were made in the proposed regulation.

Under current regulations, if, under his or her applicable agreement, an employee is getting 14 basic work days in a registration period, the employee is, in effect, employed fulltime and not eligible for unemployment benefits for his or her non-work days. The Board considers that the employees non-work days result from the operation of the extra board and the work restrictions relating thereto. Under this final rule, the Board would consider an employee to be fully employed if he or she gets 10 basic work days in a registration period.

The 14-day test for full-time work set forth in the present § 332.5 has become obsolete in light of modern day rail industry practices recognized by rail labor and management in their agreements. In recent years, collectively-bargained rules regarding train and engine crew changes have been relaxed to permit a train crew to travel substantially more miles on a given assignment. Such assignments are referred to as being in "interdivisional pool service." An employee who is a crew member on such an assignment may now travel in one day the same number of miles that previsouly required two or more work days, with the result that the employee has more than the usual number of non-work days between such assignments.

Whereas an employee in pool service formerly might work as many as 10 days out of 14 in order to be credited with a certain number of miles, he or she may now be able to work the same number of miles in only 8 days with the result that he or she has 6 rest days, rather than 4, in a two-week period and no loss of income. However, under present regulations, as long as such employee does not earn at least 14 basic days, as defined in the applicable agreement, he or she may receive unemployment benefits for two of the six rest days, since the RUIA provides for the payment of such benefits for all days of unemployment in excess of four in a 14-day registration period.

Indeed, the above example has become quite common since under current industry practices most employees in pool service will not earn 14 basic days in a two-week period, yet, as may be seen from the above example, such employees from an economic standpoint have suffered no loss of income and have the additional advantage of having more rest days than employees who may have regular hours and assignments.

The final rule recognizes this change in rail industry practices by decreasing what is regarded as the equivalent of full-time work from 14 basic work days to 10. Thus, in the example above, if the employee had earned 10 basic days through service on just 8 days, as may often be the case, he or she will not be held eligible for unemployment benefits for his or her six non-work days. In addition, to prevent avoidance of this rule, the proposed regulation provides that in determining whether an employee has earned 10 basic days, an employee who misses his or her turn to work will be credited with the number of miles or hours he or she would have been credited with had he or she not

missed the turn.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collection required by part 332 has been approved by the Office of Management and Budget under control number 3220–0022.

List of Subjects in 20 CFR Part 332

Railroad employees, Railroad unemployment benefits.

For the reasons set out in the preamble, title 20, chapter II, part 332 of the Code of Federal Regulations is hereby amended as follows:

PART 332—MILEAGE OR WORK RESTRICTIONS AND STAND-BY OR LAY-OVER RULES

1. The authority citation for part 332 is revised to read as follows:

Authority: 45 U.S.C. 362(l).

2. Section 332.5 is revised to read as follows:

§ 332.5 Equivalent of full-time work.

An employee who has the equivalent of full-time work with respect to service on days within a registration period is not eligible for unemployment benefits for any non-work days within such registration period. In determining whether an employee has the equivalent of full-time work, the Board will consider the provisions of labor-management agreements that prescribe the number of miles or hours of credit constituting a basic work day, week, or month in the employee's occupation or service. The Board will consider that an employee had the equivalent of full-time work if the number of miles or hours credited to the employee for service in the registration period is at least 10 times the number of miles or hours constituting a basic day in the employee's occupation or service. For this purpose, any miles or hours of credit not earned because the employee missed his or her turn and any penalty miles assessed to the employee shall be added to the miles or hours of credit actually earned on the basis of service on days within the registration period.

Dated: January 9, 1990.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90–1250 Filed 1–18–90; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of a proposed amendment (Amendment XI) submitted by North Dakota as a modification to its permanent regulatory program (hereinafter referred to as the North Dakota program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the North Dakota program to be consistent with the corresponding Federal regulations. It also includes editorial changes intended to clarify and reduce the volume of the State rules.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East B Street, room 2128, Casper, Wyoming 82601–1918; Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior approved the North Dakota program. The December 15, 1980, **Federal Register** (45 FR 82246) contains general background information regarding the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the program. Subsequent actions regarding the North Dakota program and program amendments can be found at 30 CFR 934.12, 934.13, 934.14, 934.15, 934.16, and 934.30.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17(d), The Director of OSM notified North Dakota, by letters dated February 3, 1986, and June 9, 1987, of the changes necessary to make the State program no less effective than the Federal regulations implementing SMCRA, as revised since December 15, 1980, the date when the North Dakota program was originally approved.

On November 1, 1988, North Dakota submitted Amendment XI (Administrative Record No. ND–G–01) to incorporate these changes and to clarify and reduce the volume of the State rules. The proposed amendment consists of revisions to the North Dakota Administrative Code (NDAC) Article 69–05.2, Surface Coal Mining and Reclamation Operations.

In a letter dated November 7, 1989 (Administrative Record No. ND–G–01), North Dakota withdrew some proposed editorial changes at NDAC 69–05.2–01–01(1)(a), NDAC 69–05.2–09–01(3), NDAC 69–05.2–13–12(6), and NDAC 69–05.2–14–02. In addition, by letter dated December 20, 1989 (Administrative Record No. ND–G–22), the State withdrew all proposed changes to that portion of NDAC 69–05.2–21–02(1) following the colon. The original language of these rules, as approved prior to this amendment, will be maintained and not removed as proposed. Also, NDAC 69–05.2–09–04(8)(b) has been corrected to properly reference subsection (7) of 69–05.2–17–05 rather than subsection (10) as proposed.

The Director announced receipt of Amendment XI in the December 14, 1988, **Federal Register** (53 FR 50246), and, in the same notice, opened the public comment period and provided opportunity for a public hearing as to its substantive adequacy (Administrative Record No. ND–G–10). The Public comment period closed on January 13, 1989. The public hearing, scheduled for January 9, 1989, was not held since no requests to testify were received from the general public

II. Director's Findings

General

Except as discussed below, the revised State rules are substantively equivalent to the corresponding Federal regulations in effect on September 30, 1983, with minor changes to eliminate redundancies, improve clarity and specificity, and incorporate State references and terms where deemed necessary or useful. In addition, the revised rules contain those changes necessary to conform to subsequent court decisions concerning the Federal rules *(In re: Permanent Surface Mining Regulations Litigation,* No. 79–1144 D.D.C. 1980; and *In re: Permanent Surface Mining Regulation Litigation*

(II), No. 79–1144 D.D.C. 1985). All other documents approved as part of the North Dakota program, such as policy statements, revegetation success standards promulgated in accordance with 30 CFR 816.116(a)(1) (54 FR 10145, March 10, 1989), and the blaster certification program promulgated in accordance with 30 CFR part 850 (50 FR 262, January 3, 1985), remain in effect and are not adversely affected by these changes. The amendment fully satisfies the requirements placed on North Dakota by the Director's Part 732 notifications of February 3, 1986, and June 9, 1987. None of the changes contained in Amendment XI alter the original findings made at the time of program approval, as required by section 503 of SMCRA and 30 CFR 732.15 (b) through (d). These findings pertain to the State's authority and capability to implement, administer, and enforce a program to regulate coal exploration and surface coal mining and reclamation operations (45 FR 82214, December 15, 1980).

Therefore, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that Amendment XI is no less stringent than SMCRA and no less effective than the corresponding Federal regulations in effect on September 30, 1983, and that it conforms to all subsequent court decisions concerning the validity of these regulations. Exceptions to this general finding are noted either in the specific findings which follow or in the November 17, 1989, part 732 notification to the State.

In addition, in accordance with 30 CFR 732.17 (d) through (f), the Director, by letter dated November 8, 1988; May 11, 1989; and November 17, 1989, has also notified North Dakota of additional program changes needed as a result of changes in the Federal regulations since September 30, 1983. He will provide additional notifications of this nature in the future as the need arises.

The revised rules also retain certain previously approved alternatives to the Federal regulations. These alternatives pertain to (1) underground mining and concurrent surface-underground mining operations, (2) mountaintop removal, (3) auger mining and operations on steep slopes, (4) in situ coal processing, (5) acid-forming materials and acid mine drainage, (6) the bond liability period on sites with an industrial postmining land use, and (7) commercial forests (Findings 1(a) (i)–(vii) and 4(h)(i), 45 FR 82217, December 15, 1980). The Director finds that, with respect to these alternatives, none of the changes proposed in Amendment XI alter OSM's original findings made at the time of program approval nor are these findings affected by revisions to the Federal regulations since that time.

Amendment XI does not affect the provisions of the North Dakota program that OSM set aside and disapproved at 30 CFR 934.13 and 934.14. These provisions remain set aside and disapproved.

1. NDAC 69–05.2–05–04, Verification of Application

The Federal regulations at 30 CFR 777.11(c) require information in applications for permits, revisions, renewals, or transfers, sales, or assignments of permit rights to be verified under otath as true and correct. North Dakota has removed the oath requirement from its rules at NDAC 69–05.2–05–04, but still requires verification by the applicant or an authorized representative of the applicant. In a letter dated February 20, 1989 (Administrative Record No. ND–G–13), North Dakota assured OSM that it interprets verification to mean affirm on oath and to prove to be true by demonstration, evidence, or testimony, and that the editorial changes do not affect the intent or requirements of the rule. Therefore, the Director finds that revised NDAC 69–05.2–05–04, as interpreted by North Dakota, is no less effective than the Federal regulations at 30 CFR 777.11(c).

2. NDAC 69–05.2–08–04(4), Probable Hydrologic Consequences (PHC) Determinations

North Dakota has revised the State rules at NDAC 69–05.2–08–04(4) to incorporate, in large part, the provisions of the Federal regulations at 30 CFR 780.21(f), except that the revised rules do not require PHC determinations to be evaluated as part of the State's review process for permit revision applications. NDAC 69–05.2–11–02(4)(b) requires that applications for permit revisions include data demonstrating that surface coal mining and reclamation operations within the revised permit area will comply with the statutory provisions of NDCC 38–14.1–14 (mining and reclamation plans), NDCC 38–14.–16 (performance bonds), and NDCC 38–14.1–24 (environmental protection performance standards). NDCC 38–14.1–14.1.o. requires that the applicant for a permit revision prepare a PHC determination. Furthermore, NDCC 38–14.1–21.3.c. requires North Dakota to review the submitted PHC information and to make a written finding as to the impacts of mining on hydrology. Thus, the North Dakota program provides for the updating, submission, and evaluation of PHC data for permit revisions in a manner consistent with the requirements of 30 CFR 780.21(f). Therefore, the Director finds that the North Dakota program as a whole is no less effective than the Federal regulations at 30 CFR 780.21(f).

3. NDAC 69–05.2–08–05(2), Permit Area-Geology Description

Unlike the Federal regulations at 30 CFR 780.22(b)(2), the North Dakota rules do not require analyses of samples collected from test borings down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer, below the lowest coal seam to be mined, which may be adversely impacted by mining. Instead, the State rules at NDAC 69–05.2–08–05(2) specify only the stratum immediately below the lowest coal seam to be mined. Therefore, the Director finds that the North Dakota rules at NDAC 69–05.2–08–05(2) are less effective than the corresponding Federal regulations. Accordingly, he is requiring North Dakota to amend its rule to require analysis of samples collected from test borings down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer, below the lowest coal seam to be mined, which may be adversely impacted by mining.

4. NDAC 69–05.2–09–14, Excess Spoil Disposal

As originally approved, NDAC 69–05.2–09–14(2)(d) allows the State, under certain conditions, to waive the stability analysis otherwise required for proposed excess spoil disposal sites. Although the comparable Federal regulation, 30 CFR 780.35(b)(5), does not provide for such a waiver, this Federal rule has not been revised since program approval. Therefore, since North Dakota has proposed only editorial revisions, OSM will not require substantive revision of the State rule at this time. However, OSM will evaluate the State's waiver criteria to determine whether they are sufficiently conservative so as to render a stability analysis unnecessary from a design perspective. If necessary, OSM will notify the State, pursuant to 30 CFR 732.17(e) to further amend its program to address this concern.

5. Protection of Historic Places

(a) *NDAC 69–05.2–09–08, permit application requirements.* The Federal regulations of 30 CFR 780.31(b) authorize the regulatory authority to require an applicant for a mining permit to protect properties within the proposed permit

area that are listed or eligible for listing on the National Register of Historic Places (NRHP). The regulatory authority may require the applicant to mitigate impacts to historic properties or to undertake treatment measures after permit issuance but before the properties are affected by mining. The North Dakota statute at NDCC 38–14.1–14.1.u.7. requires each permit application to include a plan that provides for preventing or mitigating adverse effects on all significant cultural resource sites, not just those listed or eligible for listing on NRHP. The State statute further requires that this plan be approved by the State Historic Preservation Officer (SHPO) before it can be included in the application. Therefore, the Director finds that revised NDAC 69–05.2–09–08, when read with NDCC 38–14.1–14.1.u.7., is no less effective than the Federal regulations at 30 CFR 780.31(b).

(b) *NDAC 69–05.2–10–03(4), permit findings.* The Federal regulations at 30 CFR 773.15(c)(11) require that, prior to approving any permit application or application for a significant revision of a permit, the regulatory authority make a written finding that it has taken into account the effect of the proposed permitting action on properties listed or eligible for listing on the NRHP. The finding may be supported, as appropriate, by permit conditions, changes to operation plans, or a documented decision that no additional protective measures are necessary.

The North Dakota rules at NDAC 69–05.2–10–03(4) do not specifically require this written finding. However, North Dakota's statute at NDCC 38–14.1–21.3.d. requires that, as a prerequisite to permit application approval, the regulatory authority make a written finding that the application is complete and that all requirements of State law and rules have been met. As discussed in the previous finding, NDCC 38–14.1–14.1.u.7. requires that the permit applicant develop plans to prevent or mitigate adverse impacts on significant cultural resources. By letter dated November 7, 1989 (Administrative Record No. ND–G–21), North Dakota has clarified that this term includes all sites listed or eligible for listing on the NRHP. Under the statute, the SHPO must approve these plans before the permit application can be approved. The Commission must consider this requirement when making the general written finding required by NDCC 38–14.1–21.3.a. Therefore, the Director finds that the North Dakota program already contains provisions no less effective than the Federal regulation at 30 CFR 773.15(c)(11) and that a specific written finding like that of the cited Federal regulation is unnecessary. By requiring SHPO approval of mining plans, rather than just consideration of SHPO comments on such plans as required by the Federal rules, the North Dakota program is more protective of historic sites than the Federal rules.

6. NDAC 69–05.2–09–15, Prime Farmland Operation and Reclamation Plans

The Federal regulations at 30 CFR 785.17(c) require all permit applications for areas in which prime farmland has been identified within the proposed permit area to submit specified information to the regulatory authority, including a plan for mining and restoring this prime farmland. North Dakota revised the State rules at NDAC 69–05.2–09–15 to require that a permit applicant submit a prime farmland mining and restoration plan "if appropriate". There is no indication of the meaning of the phrase "if appropriate" in this context.

In response to OSM's concern about the revised language, North Dakota, in a letter dated February 20, 1989 (Administrative Record No. ND–G–13), replied that:

> Language in [NDAC] 69–05.2–08–09(3)(b) clears up any ambiguity that may exist with the use of the phrase "if appropriate" in the referenced State rule. This language clearly states that a prime farmland restoration plan must be included in a permit application if prime farmland soil mapping units are present in the proposed permit area. If prime farmland soil mapping units are not present, the restoration plan required by [NDAC] 69–05.2–09–15 is neither needed nor required. Therefore, the use of the phrase "if appropriate" is appropriate in this rule.

Therefore, provided North Dakota interprets NDAC 69–05.2–09(15) and NDAC 69–05.2–08–09(3)(b) in the manner set forth above, the Director finds that revised NDAC 69–05.2–09(15) is no less effective than the Federal regulations at 30 CFR 785.17(c).

7. NDAC 69–05.2–12–03(3), Loss of Surety

In the February 2, 1988, Federal Register (53 FR 2840), the Director required a program amendment at 30 CFR 934.16(a). To be consistent with 30 CFR 800.16(e)(2), North Dakota had to provide that, if adequate replacement bond coverage is not posted within a specified time period following notification of the incapacity of a surety, any operator bonded by that surety must cease coal extraction, begin reclamation, and follow the requirements for permanent cessation.

To satisfy that requirement, North Dakota revised the State rules at NDAC 69–05.2–12–03(3) to provide that, if bond substitution is not made within 30 days following incapacity of the surety, the Commission may suspend the permit. Furthermore, if substitution is not made within 90 days following incapacity of the surety, the Commission must suspend the permit and require the operator to cease surface mining activities and begin reclamation and permanent cessation of operations. The North Dakota rules differ from the Federal regulations at 30 CFR 800.16(e)(2) in that North Dakota provides the State with the authority to suspend a permit within 30 days of incapacity of a surety. This added authority increases the degree of environmental protection and, therefore, does not render the State's rules less effective than the Federal regulations.

The revised North Dakota rules still require cessation of coal mining and initiation of reclamation and permanent cessation within 90 days of incapacity of a surety, just as provided in the Federal regulations. Therefore, the Director finds that revised NDAC 69–05.2–12–03(3) is no less effective than the Federal regulations at 30 CFR 800.16, and that it satisfies the requirements of 30 CFR 934.16(a).

8. NDAC 69–05.2–12–04(2), Collateral Bond

North Dakota revised NDAC 69–05.2–12–04 by removing real property as acceptable collateral for a performance bond. Since there is no Federal requirement that regulatory authorities accept real property as collateral bonds, the Director finds that revised NDAC 69–05.2–12–04 is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 800.21.

9. NDAC 69–05.2–13–06, Avoidance of Underground Mine Areas

As part of its effort to reduce the amount of language in its rules, North Dakota deleted a provision in the State rules at NDAC 69–05.2–13–06 concerning the Mine Safety and Health Administration's (MSHA) approval of surface coal mining operations within 500 feet of an underground mine. The Director finds that this change does not render the North Dakota rules less effective than the corresponding Federal regulations at 30 CFR 816.79(b) since both State and Federal rules are intended to protect the safety of underground mine workers at active coal mine operations. As noted in the original program approval notice, the Secretary did not require that North Dakota adopt underground mining regulations since there are not active

underground mines in the State and the geology of the coal region makes it unlikely such mines will ever exist. OSM expects North Dakota would provide OSM with timely notice, in the event that this situation were to change, to permit OSM to re-examine this finding if necessary. Furthermore, NDAC 69–05.2–05–06(2) directs North Dakota to coordinate and review the issuance of permits with the appropriate Federal agencies who administer applicable natural resource protection acts. At OSM's request, North Dakota added MSHA to this list of agencies (45 FR 8224, December 15, 1980).

10. NDAC 69–05.2–16–01(2), Hydrologic Balance-Coal Exploration

North Dakota has added language to NDAC 69–05.2–16–01(2), to require compliance with all applicable provisions of Chapter 16 (the permanent program performance standards) when coal exploration activities "substantially disturb" the land surface as determined by the State Geologist. The corresponding Federal rule at 30 CFR 815.15(i) requires that all coal exploration which disturbs the land surface be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with 30 CFR 816.41 through 816.49. Under the North Dakota program, responsibility for the regulation of coal exploration rests with the Office of the State Geologist (NDAC 43–02–01–20). It is OSM's understanding that by virtue of such supervision by the State Geologist, all exploration activities, as applicable, would be subject to NDAC 69–05.2–16–01(2). Therefore, the Director finds that revised NDAC 69–05.2–16–01(2) is no less effective than the Federal regulations at 30 CFR 815.15(i).

11. NDAC 69–05.2–16–05(1)(b)(1), Hydrologic Balance-Surface Water Monitoring

North Dakota has added language to NDAC 69–05.2–16–05(1)(b)(1) to require that point-source discharge monitoring be conducted according to North Dakota Department of Health standards. The corresponding Federal regulations at 30 CFR 780.21(j)(2)(ii) require that such monitoring be conducted in accordance with 40 CFR parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System (NPDES) permitting authority. As noted in the original program approval notice, the North Dakota Department of Health has primacy under the Clean Water Act with respect to the NPDES permitting program (45 FR 82243, December 15, 1980). Hence, State Department of Health standards will implement the requirements of 40 CFR parts 122, 123, and 434. Therefore, the Director finds that revised NDAC 69–05.2–16–05(1)(b)(1) is no less effective than the corresponding Federal regulations at 30 CFR 780.21(j)(2)(ii).

12. NDAC 69–05.2–16–08(1)(b), Hydrologic Balance-Effluent Limitations

The North Dakota rules at NDAC 69–05.2–16–08(1)(b) require sediment control measures to be designed, constructed, and maintained using the best technology currently available to meet "the more stringent of applicable State effluent limitations." The corresponding Federal regulations at 30 CFR 816.45(a)(2) specify the more stringent of applicable State or Federal limitations. However, as noted in the previous finding, the North Dakota Department of Health has an approved water quality plan and primacy for the NPDES permitting program under the Clean Water Act, 33 U.S.C. 1251 *et seq.* (45 FR 82243, December 15, 1980). All applicable Federal effluent standards are incorporated into the approved State plan and thus become standards which must be met by operators. Under these circumstances, the Director finds that revised NDAC 69–05.2–16–08(1)(b) is no less effective than the Federal regulations at 30 CFR 816.45(a)(2).

13. NDAC 69–05.2–16–20(2), Hydrologic Balance (Stream Buffer Zones)

The Federal regulations at 30 CFR 816.57(a) prohibit the disturbance of land within 100 feet of a perennial or intermittent stream unless the regulatory authority first finds that surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quality and quantity or other environmental resources of the stream. The corresponding State rules at NDAC 69–05.2–16–20(2) do not require the finding concerning violation of water quality standards. The State statute at NDCC 38–14.1–24.8.b., addresses only suspended solids; no other parameters are mentioned. Therefore, the Director finds that revised NDAC 69–05.2–16–20(2) is less effective than the Federal regulations at 30 CFR 816.57(a), and he is requiring that the State amend it to require the finding.

14. NDAC 69–05.2–21–02(1), Backfilling and Grading

The Federal regulations at 30 CFR 816.102(a)(3) require all disturbed areas to be backfilled and graded to achieve a postmining slope that does not exceed either the angle of respose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3. The corresponding North Dakota rules at NDAC 69–05.2–21–02(1) lack the static safety factor provision. However, unlike the corresponding Federal statutory provision in section 515(b)(3) of SMCRA, the North Dakota statute, at NDCC 38–14.1–24.3. requires that all areas affected by surface coal mining operations be backfilled, compacted (where advisable to insure stability), and graded to the gentlest topography possible to develop a postmining landscape that will provide for maximum stability (among other things).

The State argues that this statutory provision renders the State program no less effective than the Federal regulations because it requires maximum stability rather than the minimum stability specified in the Federal regulations. Furthermore, the coal mining regions of North Dakota are relatively flat, with only an occasional slope exceeding 20 percent (lv:5h). (See Finding 1(a)(ii), 45 FR 82218, December 15, 1980.) Steeper slopes would be eliminated by the mining process. Also, all operations use the the area method of mining, which involves extensive pit excavation. Except for the feathering in of initial box cut spoils, the toe of the backfill does not rest on a downslope or other unexcavated surface. Under these circumstances, foundation conditions are of little significance with respect to stability and standard backfilling and grading procedures will result in the minimum stability specified in the Federal regulations. Stability concerns relative to the 1.3 static safety factor generally do not arise unless slopes approach or exceed lv:2.5h or contour or related mining methods are used. OSM has reviewed a letter dated December 20, 1989 from the North Dakota regulatory authority (Administrative Record No. ND–G–22). North Dakota provided information to OSM on the issue of the 1.3 static safety factor. OSM interprets this letter to mean that a degree of stability consistent with the equivalent of a 1.3 static safety factor is currently met in North Dakota. Therefore, the lack of a specific minimum static safety factor in NDAC 69–05.2–21–02(1) does not render the State program less effective than the Federal regulations at 30 CFR 816.102(2)(3).

Accordingly, the Director approves the North Dakota regulation with the understanding that North Dakota will implement it consistent with this discussion.

If at some period in the future, it is demonstrated that the North Dakota standard does not provide a level of

protection comparable to that provided by the Federal regulations, OSM will reconsider this finding.

15. NDAC 69-05.2-22-07(1), Revegetation Success Standards and Evaluation Techniques

North Dakota has revised the State rules at NDAC 69-05.2-22-07(1) to incorporate standards contained in its revegetation policy document "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments" (Administrative Record No. ND-F-01). While this revision appears to adopt only Section II of the document, which establishes success standards, the Federal regulations at 30 CFR 816.116(a)(1) require that both standards and evaluation techniques be included within the approved program. However, the Director notes that the entire document was approved in the March 10, 1989, **Federal Register** (54 FR 10141) and incorporated as part of the North Dakota program in Amendment X (Administrative Record No. ND-F-14). Therefore, any deviation from any portion of this document would require prior approval as a State program amendment. Section III of the revegetation policy document is dedicated to procedures for sampling, measurement, and statistical analyses of vegetation parameters. Therefore, the Director finds that revised NDAC 69-05.2-22-07(1) is not inconsistent with the Federal regulations at 30 CFR 816.116(a)(1) but, as stated in Finding 1 of the March 10, 1989, **Federal Register** notice, North Dakota is limited to use of the evaluation techniques specified in Amendment X.

16. Required Amendments Concerning Revegetation

In approving Amendment X, the Director, at 30 CFR 934.16, required that North Dakota further amend its program to remove inconsistencies between the State program (the North Dakota rules and the revegetation policy document) and the Federal regulations (54 FR 10145, March 10, 1989). As explained below, North Dakota has amended its rules to partially satisfy three of the eight required amendments.

a. *NDAC 69-05.2-22-07(4)(e), countable trees and shrubs.* To be consistent with the Federal regulations at 30 CFR 816.116(b)(3)(ii), the Director required, at 30 CFR 934.16(b), that North Dakota amend its program to require that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place at least 60 percent of the 10-year period of revegetation responsibility.

North Dakota revised the State rules at NDAC 69-05.2-22-07(4)(e) to require that at least 80 percent of the countable trees and shrubs have been in place at least eight growing seasons. However, "growing season" is not defined. Therefore, since more than one growing season may exist within one year, the revised rule does not clearly satisfy the requirements of 30 CFR 934.16(b). Also, the revegetation policy document has not been modified and is now inconsistent with the State rules as well as the Federal regulations. Therefore, the Director is retaining the existing requirement at 30 CFR 934.16(b) although the deadline for compliance is being extended.

b. *NDAC 69-05.2-22-07(4)(e), woody plant stocking.* To be consistent with the Federal regulations at 30 CFR 816.116(a)(2), the Director required, at 30 CFR 934.16(d), that North Dakota amend its program to require that evaluations of woody plant stocking be statistically valid at the 90 percent confidence level. North Dakota partially satisfied this requirement by revising the State rules of NDAC 69-05.2-22-07(4)(e)(1) to incorporate the 90 percent statistical confidence requirement. However, while North Dakota has corrected the deficiency in its rules, its revegetation policy document retains the deficiency and is now inconsistent with the State rules as well as the Federal regulations. Therefore, the Director is modifying 30 CFR 934.16(d) to remove the reference to the State rules and extend the time within which North Dakota must amend its revegetation policy document.

c. *NDAC 69-05.2-22-02(5), revegetation success standards for shelterbelts.* To be consistent with the Federal regulations at 30 CFR 816.116(a)(1), the Director required, at 30 CFR 934.16(f), that North Dakota amend its program to establish tree and shrub (woody plant) stocking and vegetative ground cover success standards for all types of shelterbelts. He also required North Dakota to clarify that woody plants used to determine the success of shelterbelts must meet time-in-place requirements no less effective than those of 30 CFR 816.116(b)(3)(ii). This regulation states that at least 80 percent of the woody plants counted must be place at least 60 percent of the period of revegetation responsibility.

North Dakota revised the State rules at NDAC 69-05.2-22-02(5) to specify that shelterbelt woody plant stocking must follow standards and specifications developed by the Soil Conservation Service for North Dakota farmstead and field windbreaks, or other standards approved by North Dakota. (However, as discussed in Finding 15 above, if North Dakota elects to use other standards, they must first be approved by OSM via the State program amendment process.) North Dakota also amended NDAC 69-05.2-22-07 (3)(d) and (4)(f) to require that (1) the number of trees and shrubs must be equal to or greater than the approved standard, (2) vegetation density and vigor must be equal to or greater than the approved standard, and (3) erosion must be adequately controlled. These revegetation success standards, which apply to all types of shelterbelts, are the same standards that OSM previously approved for use on replacement shelterbelts as part of North Dakota's revegetation policy document. Therefore, the Director finds that these standards meet the requirements of 30 CFR 816.116(a)(1).

However, while North Dakota has revised its rules to provide revegetation success standards for all types of shelterbelts, as required by 30 CFR 934.16(f), it has not revised its revegetation policy document to provide revegetation success standards for all types of shelterbelts. Also, it has not clarified in this document and its rules that shelterbelt trees and shrubs must meet time-in-place requirements no less effective than those established in 30 CFR 816.116(b)(3)(ii). Therefore, the Director finds that revised NDAC 69-05.2-22-02(5) only partially satisfy the requirements of 30 CFR 934.16(f). Accordingly, while he is revising 30 CFR 934.16(f) to reflect the regulatory revisions, he is largely retaining the existing requirements.

d. *NDAC 69-05.2-22-07(4)(e)(2), Revegetation Success Standards for Fish and Wildlife Habitat.* To be consistent with the Federal regulations at 30 CFR 816.116(a)(2), the Director required, at 30 CFR 934.16(g), that North Dakota amend its program to require that vegetative ground cover on lands reclaimed to fish and wildlife habitat equal at least 90 percent of the approved revegetation success standard. North Dakota has partially satisfied that requirement by revising the State rules at NDAC 69-05.2-22-07(4)(e)(2) to require that fish and wildlife habitat ground cover be equal to or greater than 90 percent of the approved revegetation success standard. However, while North Dakota has corrected the deficiency in its rules, its revegetation policy document retains the deficiency and is now inconsistent with the State rules as well as the Federal regulations. Therefore, the Director is modifying 30

CFR 934.16(g) to remove the reference to the State rules and to extend the time within which North Dakota must amend its revegetation policy document.

IV. Summary and Disposition of Comments

As discussed in the "Submission of Amendment" section of this notice, the Director solicited public comments and provided opportunity for a public hearing on Amendment XI. No comments were received, and, because no one requested an opportunity to testify at a public hearing, no public hearing was held.

Pursuant to 30 CFR 732.17(h)(4), opportunity for review of the amendment was provided to the North Dakota State Historic Preservation Officer (SHPO) and to the Advisory Council on Historic Preservation (ACHP). The SHPO expressed concern that certain terms, such as "historic lands" and "historic places," are used interchangeably in the State rules. The SHPO also suggested that North Dakota include the word "buildings" and substitute the word "sites" for "places" in its definition of "historic lands." The Director believes that North Dakota's definition of historic lands at NDAC 69-05.2-01-02(42) and requirements for cultural resource information in permit applications at NDCC 38-14.1-14.1.u. 2. and 3. are in keeping with the Federal regulations. Variability in use of terminology of the type cited by the SHPO does not imply any difference in meaning. Sites are equivalent to places. North Dakota's definition of historic lands in NDAC 69-05.2-01-02(42) includes structures, a term which would include buildings, and the terms building and sites are used in NDCC 38-14.1-14.1.u. 2. and 3. Additionally, North Dakota's terminology is not inconsistent with Federal regulatory language. Therefore, no changes have been required.

The SHPO expressed concern that, while NDAC 69-05.2-04-01(6), 69-05.2-09-08, and 69-05.2-10-03(4) offer protection only to properties listed on the State Historic Sites Registry or the NRHP, they did not also protect properties eligible for listing on the State and National registers. The corresponding Federal regulations (30 CFR 761.12(f), 780.31(a), and 773.15(c)(3)) also are limited to places actually listed on the NRHP. Therefore, the Director cannot require that the State include properties "eligible for listing." However, the consideration and protection of sites eligible for listing is required by NDCC 38-14-.1-14.1.u.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11), the Director also solicited comments from various Federal agencies having an actual or potential interest in the North Dakota program.

The Department of the Interior, Bureau of Indian Affairs (BIA), commented that the amendment did not acknowledge the presence of Indian lands in North Dakota and did not require that, if any surface mining operations were ever planned adjacent to Indian lands, North Dakota notify the BIA or Indian mineral owners (Administrative Record No. ND-G-06). In response, the Director notes that SMCRA does not establish separate requirements for operations bordering but not located on Indian lands. Like section 507(b)(2) of SMCRA, North Dakota requires at NDCC 38-14-13 that a planned surface coal mining operation identify surface and mineral owners adjacent to the proposed operation. It does not require that these owners receive notification independent of the general public notice in the local newspapers within the locality of a planned mining operation.

V. Director's Decision

Based on the above findings, the Director is approving Amendment XI as submitted to OSM on November 1, 1988, and modified on November 7, 1989, and December 20, 1989. The Federal regulations at 30 CFR part 934 that codify decisions concerning the North Dakota program are being amended to implement this decision. The Director is approving these rules with the provision that they be fully promulgated in a form identical to that submitted to and reviewed by OSM. However, the Director will require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM oversight of the North Dakota 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 between State and Federal standards is required by SMCRA.

As discussed in Findings 7, 16.b., 16.c., and 16.d., certain revisions to the North Dakota program set out in Amendment XI have, in whole or in part, satisfied the requirements of 30 CFR 934.16(a), (d), (f), and (g). The Director is amending the Federal regulations at 30 CFR 934.16 to reflect these revisions.

As discussed in Finding 3 and 13, North Dakota rules NDAC 69-05.2-.08-05(2) (geology description) and 69-05.2-16-20(2) (stream buffer zones) must be further amended to be no less effective than the comparable Federal regulation. The Director is amending 30 CFR 934.16 to require further revision of these State rules.

Affirmative Disapprovals

In the notice announcing the Secretary's decision on North Dakota's proposed program, the Secretary, in compliance with the February 26, May 16, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia *(In re: Permanent Surface Mining Regulation Litigation,* No. 79-1144), affirmatively disapproved certain provisions of that program. The disposition of these affirmative disapprovals is discussed below.

At 30 CFR 934.12(a), the Secretary affirmatively disapproved NDAC 69-05.2-25-01 to the extent that it did not allow negligible farmland interruptions and undeveloped rangelands as exclusions to the hydrology requirements. However, since provisions for these exclusions appear in the North Dakota statute at NDCC 38-14.1-21.3.d., the Director finds that the affirmative disapproval is unnecessary and he is removing it.

At 30 CFR 934.12(b), the Secretary affirmatively disapproved NDAC 69-05.2-16.04(2) as it related to effluent-standard exemptions during periods of precipitation, pending his promulgation of new regulations. On September 26, 1983, OSM promulgated these new regulations (48 FR 44051) and, on September 1, 1984, North Dakota subsequently promulgated its own revisions to this rule to reflect the Federal changes. Therefore, the Director finds that this affirmative disapproval is no longer necessary and he is removing it.

At 30 CFR 934.12(c), the Secretary affirmatively disapproved NDAC 69-05.2-26-01(2) to the extent that it required an operator on prime farmland to actually return the land to crop production after mining. North Dakota subsequently repealed this rule (48 FR 5913, February 9, 1983). Therefore, the Director finds that this affirmative disapproval is no longer necessary and he is removing it.

At 30 CFR 934.12(d), the Secretary affirmatively disapproved the State rules at NDAC 69-05.2-23-01 to the extent that they could be interpreted as not allowing an operator the option of restoring mined land to a condition capable of supporting either its use before mining or a higher use. North Dakota subsequently amended this rule to eliminate this interpretive possibility (48 FR 5913, February 9, 1983). Therefore, the Director finds that this

affirmative disapproval is no longer necessary and he is removing it.

VI. Procedural Determinations

Compliance with the National Enviromental Policy Act

The Secretary of the Interior 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.

Compliance with Executive Order No. 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 regulatory review by OMB and the requirement to prepare a regulatory impact analysis.

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.

VII. List of Subjects in 30 CFR Part 934

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

Dated: January 6, 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 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

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

§ 934.12 [Removed]

2. Section 934.12 is removed.

§ 934.14 [Redesignated as § 934.12]

3. Section 934.14 is redesignated as § 934.12.

4. In § 934.15, paragraph (m) is added to read:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(m) The following revisions to the North Dakota permanent regulatory program, as submitted to OSM on November 1, 1988, and modified on November 7, 1989, and December 20, 1989, are approved effective January 19, 1990: Amendment XI, which replaces all existing coal surface mining reclamation rules promulgated as Article 69–05.2 of the North Dakota Administrative Code with a new set of rules, consisting of Parts 69–05.2–01 through 69–05.2–31 of that code.

5. In § 934.16, paragraph (a) is removed and reserved, the section heading and paragraphs (b), (d), (f), and (g) are revised, and paragraphs (j) and (k) are added to read:

§ 934.16 Required regulatory program amendments.

(a) [Reserved]

(b) By March 20, 1990, North Dakota shall submit proposed revisions to NDAC 69–05.2–22–07.4(e) and the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments" or otherwise propose to amend its program to require that at least 80 percent of the trees and shrubs counted to determine revegetation success have been in place at least 60 percent of the 10–year period of revegetation responsibility.

* * * * *

(d) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments" to require that evaluations of the success of woody plant stocking be statistically valid at the 90 percent confidence level.

* * * * *

(f) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments" to include tree and shrub stocking and vegetative ground cover success standards for all types of shelterbelts and require, both in the policy document and its rules at NDAC 69–05.2–22–07.4(f), that trees and shrubs used in shelterbelts meet time-in-place and related requirements no less effective than those established in 30 CFR 816.116(b)(3)(ii).

(g) By March 20, 1990, North Dakota shall submit proposed revisions to the policy document entitled "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Post-Mining Vegetation Assessments" to require that vegetative ground cover on lands reclaimed to fish and wildlife habitat equal at least 90 percent of the success standard.

* * * * *

(j) By March 20, 1990, North Dakota shall submit a proposed revision to its rules at NDAC 69–05.2–16–20(2) to provide that land within 100 feet of a perennial or intermittent stream not be disturbed unless the State explicitly finds that the surface mining activities will not cause or contribute to a violation of applicable State or Federal water quality standards.

(k) By March 20, 1990, North Dakota shall submit a proposed revision to its rules at NDAC 69–05.2–08–05(2) to require analysis of samples collected from test borings down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer, below the lowest coal seam to be mined, which may be adversely impacted by mining.

[FR Doc. 90–986 Filed 1–18–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 411, 412, and 489

[BPD–302–CN]

RIN 0938–AC05

Medicare as Secondary Payer and Medicare Recovery Against Third Parties

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects final rules regarding medicare as secondary payer and medicare recovery against third parties published on October 11, 1989 at 54 FR 41716. More specifically, this document makes reference, in the preamble, to a new definition added to the rules, restores two words that were unintentionally omitted and corrects a garbled sentence and the Redesignation Table. With respect to the rules text, this notice redrafts four sentences for greater clarity, corrects an example and a typographical error, restores an omitted word and a footnote that was overlooked, and specifies the effective date of a particular provision.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Luisa V. Iglesias (202) 245–0383.

Corrections

1. On page 41717, column 2, the following is inserted at the end of the first response: We also added a definition of *"Coverage"* or *"covered services."*

2. On page 47120, column 1, the sentence beginning on line 23 is revised to read as follows: "In cases in which the Medicare provisions conflict with a health provision or contract, the Medicare law must prevail.".

3. On page 41720, column 1, in line 39, "Moreover, third" is inserted immediately before "party".

4. On page 41733, column 1, in the Redesignation Table, the second "405.319(a)" is changed to "405.319(b)", and "405.323(a) . . . 411.28" is removed as duplicative.

5. On page 41735, column 1, in the heading for § 411.30, the word "payment" is inserted immediately after "party".

§ 411.15 [Corrected]

6. On page 41737, column 2, in paragraph (l)(2), "in" is changed to "is".

§ 411.24 [Corrected]

7. On page 41738, column 2, paragraph (i)(1), the first sentence is revised to read:

(i) * * *

(1) In the case of liability insurance settlements and disputed claims under employer group health plans and no-fault insurance, the following rule applies:

§ 411.25 [Corrected]

8. On page 41738, column 3, in § 411.25(a), "ought to" is changed to "should", "HCFA" is removed, and "to the Medicare intermediary or carrier that paid the claim." Is inserted after "effect".

§ 411.25 [Corrected]

9. On page 41738, column 3, in § 411.25(b), the parenthetical statement is revised to read: "(including the particular type of insurance coverage as specified in § 411.20(a)".

§ 411.25 [Corrected]

10. On page 41738, column 3, § 411.25(c) is revised to read:

(c) If a plan is self-insured and self-administered, the employer must give the notice to HCFA. Otherwise, the insurer, underwriter, or third party administrator must give the notice.

§ 411.33 [Corrected]

11. On page 41740, column 2, the first three lines of (f)(3)(iv) are revised to read:

(f) * * *

(3) * * *

(iv) The provider's charge minus the Medicare deductible and coinsurance: $1,280 −$75−$194.60=1010.40. Medicare pays $24.

§ 411.50 [Corrected]

12. On page 41742, column 3, in paragraph (c)(2), the parenthetical statement is removed and the phrase "November 13, 1989" is inserted to replace it.

§ 411.72 [Corrected]

13. On page 41745, column 2, in § 411.72(a)(4)(ii), line 1, the numeral "3" is converted to a superscript to indicate a footnote, and the following footnote is added at the end of the column:

[3] A spouse may be entitled to Medicare Part A benefits on the basis of the employed individual's earnings record, or the spouse's own earnings record.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance, and No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 12, 1990.

James E. Larson,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90–1273 Filed 1–18–90; 8:45 am]

BILLING CODE 4120–01–M

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42 CFR Part 433

[BQC–059–CN]

RIN 0938–AA63

Medicaid Program; Medicaid Management Information System: Revised Definition of "Mechanized Claims Processing and Information Retrieval System"

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: This notice makes some technical corrections to part 433 regarding State fiscal administration, as amended by our final rule on October 13, 1989, 54 FR 41966.

EFFECTIVE DATE: November 13, 1989.

FOR FURTHER INFORMATION CONTACT: Julie Brown (301) 966–4669.

SUPPLEMENTARY INFORMATION: On October 13, 1989, in FR Doc. 89–24305, we published amendments to 42 CFR part 433, State Fiscal Administration (54 FR 41966). In that final rule, we overlooked two changes necessary to conform the amended rule to other revisions and we cited one statutory section incorrectly.

§ 433.112 [Corrected]

1. In column 2, page 41973, § 433.112(b)(6), line 8 should read: "developed, installed or enhanced with 90 percent". Adding the works "or enhanced" conforms the rule to our stated policy of allowing 90 percent FFP for enhancements (see the title of § 433.112 and paragraph(a)).

§§ 433.119 and 433.121 [Corrected]

2. In column 1, page 41974;

a. Section 433.119(c)(3), line 5: Replace the word "Grant" with "Departmental" to conform to the new name of the Departmental Appeals Board.

b. Section 433.121(a), line 14: The statutory cite should read: section 1903(r)(4)(B).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance)

Dated: January 12, 1990.

James E. Larson,

Deputy Assistant Secretary for Information and Resources Management.

[FR Doc. 90–1274 Filed 1–18–90; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 334

RIN 3067–AB35

Graduated Mobilization Response

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule adds a new part in title 44 Code of Federal Regulations, Graduated Mobilization Response Guidance, chapter I, Federal Emergency Management Agency (FEMA), subchapter E Preparedness. Part 334 responds to part 1 of Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy. Sections 1701(6) and 1701(11) of the Executive Order direct the Director, FEMA, to coordinate the implementation of policies and programs for efficient mobilization and to provide guidance to the Federal departments and agencies on the appropriate use of defense production authorities. This part defines the Graduated Mobilization Response (GMR) System as part of the National Security Emergency Preparedness

program of planning mobilization actions that will permit a timely reaction to early warning indicators. The GMR system is to be incorporated by Federal departments and agencies in their mobilization plans and programs.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Richard F. Marilley, Senior Planning Officer, Office of Mobilization Preparedness, Federal Emergency Management Agency, room 627, 500 C Street SW., Washington, DC 20472, Telephone (202) 646–3003..

SUPPLEMENTARY INFORMATION: On June 8, 1989, FEMA published a proposed regulation in the Federal Register (54 FR 24570) to:

(a) Provide policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1–103 of Executive Order (E.O.) 12148, as amended, which includes functions contained in E.O. 11051; section 104(f) of E.O. 12656; and part 2 of E.O. 10480;

(b) Establish a Graduated Mobilization Response (GMR) system for developing and implementing mobilization action that are responsive to a wide range of national security threats and ambiguous or specific warning indicators.

(c) Provide guidance to the Federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

Three responses to the invitation for comments were received. The first commentor had no recommendations for change. The second commentor noted that telecommunications response activities are not governed by Executive Order 12656, or by rules that implement Executive Order 12656 (e.g. GMR). FEMA agrees with this comment. The second sentence in § 334.1(b) has been rewritten for the purpose of clarification. The commentor was concerned that the relationship and relevance of GMR to "natural disaster" and "technological emergency" should not be given equal weight to that of military crisis and deterrence. It is FEMA's position that the GMR system is broad and flexible enough to cover all types of emergencies, even though the emphasis in planning is on defense mobilization. In further answer to the commentor, the GMR concept is designed as a holistic approach to emergency preparedness planning that is process oriented, focusing on an array of specific actions that can be taken to meet a specific situation. These actions constitute response options that have been identified in advance as part of the GMR implementation process. The actions are part of the deterrence response capability and designed to mitigate the impact of or reduce significantly, the lead time required to meet defense and essential civilian needs. Each department and agency will undertake GMR planning to fit their specific program needs. As such, the guidance is presented in a general way, understand that the GMR concept will be adapted to specific agency needs. The commentor correctly noted that § 334.3 "Definitions" is in error. The citation has been corrected to read § 334.4. FEMA disagrees with the comment that the definition of "mobilization" excludes actions taken in advance of an emergency. Mobilization is an activity that is not only an immediate response to an emergency but is also an activity that is an integral part of the preparatory actions for an emergency. As such, mobilization is fundamental to GMR.

With regard to the comment that GMR plans are not required under E.O. 12656, the definition of GMR Plans is supported by the President's National Security Strategy Posture Statement of January 1988 and by section 201(4) of E.O. 12656. Other comments regarding the structure of the guidance were given careful consideration, and it is FEMA's position that the guidance should not address specifics of how GMR planning is accomplished, but instead provide a conceptual framework within which the departments and agencies can adopt GMR to their planning and preparedness programs.

Concerning § 334.6, the third commentor: (a) Stressed that the differences between stage 3 and stage 2 should be more definitive; (b) stressed that the degree of coordination and control to be exercised by the National Security Council will increase as a crisis moves through stage 2 to stage 1; and (c) recommended that a description of stage 1 responsibilities be included under § 334.6 Department and agency responsibilities. FEMA has considered these recommendations and has made appropriate changes to § 334.6.

Regulatory Analysis

This Final Rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This Part applies to Federal government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this final rule will not have a significant economic impact on a substantive number of small entities.

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and Office of Management Budget implementing regulations 5 CFR Part 1320.

The regulation in this part provides guidance to Federal agencies which may or may not take an action which could be subject to environmental documentation requirements. The guidance has no environmental consequences and it is determined, under FEMA's regulation published in 44 CFR 10.8, that is not necessary to prepare either an environmental assessment or an environmental impact statement.

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirements that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments. The problem dealt with in this part is national in scope. In view of the joint Federal-State responsibility for civil defense, and FEMA's role under the Federal Civil Defense Act of 1950, as amended, the regulation in this Part is determined to conform FEMA assistance to Executive Order 12612.

List of Subjects in 44 CFR Part 334

National Defense, Graduated mobilization response.

Accordingly, subchapter E, chapter I, title 44, Code of Federal Regulations is amended by adding new part 334 as following.

PART 334—GRADUATED MOBILIZATION RESPONSE

Sec.

Sec.
334.4 Definitions.
334.5 GMR system description.
334.6 Department and agency responsibilities.
334.7 Reporting.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq;* E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949–53 Comp., p. 962; E.O. 12472 of April 3, 1984, 3 CFR 1948 Comp., p. 193; E.O. 12656 of November 18, 1988. 53 FR 47491;

§ 334.1 Purpose.

(a) Provides policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1–103 of Executive Order 12148, as amended, which includes functions continued from E.O. 11051; section 104(f) of Executive Order 12656; and part 2 of Executive Order 10480.

(b) Establishes a Graduated Mobilization Response (GMR) system for developing and implementing mobilization actions that are responsive to a wide range of national security threats and ambiguous or specific warning indicators. GMR provides for a coherent decision making process with which to proceed with specific responses to an identified crisis or emergency.

(c) Provides guidance to the federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

§ 334.2 Policy.

(a) As established in Executive Order 12656, the policy of the United States is to have sufficient emergency response capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. Accordingly, each federal department and agency shall prepare its national security emergency preparedness plans and programs to respond adequately and in a timely manner to all national security emergencies.

(b) As part of emergency response, the GMR system should be incorporated in each department's and agency's emergency preparedness plans and programs to provide appropriate and effective response options for consideration in reacting to ambiguous and specific warnings.

(c) Departments and agencies will be provided early warning information developed by the intelligence community and policy statements of the President.

(d) Emergency resource preparedness planning is essential to ensure that the nation is adequately prepared to respond to potential national emergencies. Such emergency resource preparedness planning requires an exchange of information and planning factors among the various departments and agencies responsible for different resource preparedness actitivies.

(e) To carry out their emergency planning activities, civilian departments and agencies require the Department of Defense's (DOD) assessment of potential military demands that would be made on the economy in a full range of possible national security emergencies. Similarly, DOD planning should be conducted using planning regimes consistent with the policies and plans of the civilian resource departments and agencies.

(f) Under section 104(c) of Executive Order 12656, FEMA is responsible for coordinating the implementation of national emergency preparedness policy with federal departments and agencies and with state and local governments and, therefore, is responsible for developing a system of planning procedures for integrating the emergency preparedness actions of federal, state and local governments.

(g) Federal departments and agencies shall design their preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

(1) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies; and

(2) Identification of actions that could be taken at the federal and local levels of government in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the leadtime associated with full emergency action implementation.

§ 334.3 Background.

(a) The GMR system is designed to take into account the need to mobilize the Nation's resources in response to a wide range of crisis or emergency situations. GMR is a flexible decision making process of preparedness and response actions which are appropriate to warning indicators or an event. Thus, GMR allows the government, as a whole, to take small or large, often reversible, steps to increase its national security emergency preparedness posture.

(b) Crises, especially those resulting in major military activities, always have some political or economic context. As the risks of military action increase, nations undertake more extensive preparations over a longer perod of time to increase their military power. Such preparations by potential adversaries shape the nature and gravity of the threat as well as its likelihood and timing of occurrence. These measures permit the development of reliable indicators of threat at an early time in the evolution of a crisis. Depending on the nature of the situation or event and the nation involved, these early warning indicators may emanate from the political, socio-economic and/or industrial sectors.

(c) The GMR system enables the nation to approach mobilization planning and actions as part of the deterrent response capability and to use it to reduce the probability of conflict. Alternatively, if deterrence should fail, the GMR system would enable the nation to undertake a series of phased actions intended to increase its ability to meet defense and essential civilian requirements. The GMR system integrates the potential strength of the national economy into U.S. national security strategy.

§ 334.4 Definitions.

(a) *Graduated Mobilization Response* (GMR) is a system for integrating mobilization actions designed to respond to ambiguous and/or specific warnings. These actions are designed to mitigate the impact of an event or crisis and reduce significantly the lead time associated with a full national emergency action implementation.

(b) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(c) *Mobilization* is the process of marshalling resources, both civil and military, to respond to and manage a national security emergency.

(d) *GMR Plans* are those agency documents that describe, in general, the actions that an agency could take in the early stages of a national security emergency, or upon receipt of warning information about a possible national security emergency. These actions would be designed to mitigate the impact of, or reduce significantly, the lead times associated with full emergency action implementation. Such plans are required by section 201(4)(b) of Executive Order 12656.

(e) *A Costed Option Package* is a document that describes in detail a particular action that an agency could take in the early stages of a national security emergency. The general content of a GMR costed option package includes alternative response options; the resource implications of each option; shortfalls, costs, timeframes and political feasibility.

§ 334.5 GMR System description.

The GMR system contains three stages of mobilization activity (additional intermediate GMR stages may be developed). For example, a federal department or agency might divide "Crisis Management" into two, three, or more levels as suits its needs.

(a) *Stage 3, Planning and Preparation.* During the planning and preparation stage, federal departments and agencies develop their GMR plans and maintain capability to carry out their mobilization-related responsibilities in accordance with section 201 of Executive Order 12656. General types of problems likely to arise in a crisis situation are identified along with possible methods for dealing with them. Investment programs can be undertaken to overcome identified problems.

(b) *Stage 2, Crisis Management.* During the crisis management stage, GMR plans are reviewed and capabilities will be re-examined in light of an actual event or crisis perceived to be emerging.

(1) Federal departments and agencies may need to gather additional data on selected resources or increase their preparedness activities. Costed Option Packages may need to be updated or new ones prepared for the response option measures in each of the department's and agency's area of responsibility. For example, when it appears likely that increased national resources may be required, resource readiness could be improved through the procurement of essential long lead time items, especially those that can be used even if the situation does not escalate. In general, long lead time preparedness actions would be considered for implementation at this time.

(2) Many preparedness actions at this stage would be handled through reprogramming, but the Costed Option Packages may also require new funding.

(3) If the crisis worsens, and prior to the declaration of national emergency, it may be necessary to surge certain production and stockpile items for future use.

(c) *Stage 1, National Emergency/War.* During a national emergency or declaration of war, mobilization of all national resources escalates and GMR will be subsumed into the overall mobilization effort. As military requirements increase, the national resources would increasingly be focused on the national security emergency. This would involve diverting non-essential demand for scarce resources from peacetime to defense uses, and converting industry from commercial to military production. Both surge production and expansion of the nation's productive capacity may also be necessary. Supplemental appropriations may be required for most Federal departments and agencies having national security emergency responsibilities.

§ 334.6 Department and agency responsibilities.

(a) During Stage 3, each Federal department and agency with mobilization responsibilities will develop GMR plans as part of its emergency preparedness planning process in order to meet possible future crisis. Costed Option Packages will be developed for actions that may be necessary in the early warning period. Option packages will be reviewed, focused and refined during Stage 2 to meet the particular emergency.

(b) Each department and agency should identify response actions appropriate for the early stage of any crisis or emergency situation, which then will be reviewed, focused and refined in Stage 2 for execution, as appropriate. GMR plans should contain a menu of costed option packages that provide details of alternative measures that may be used in an emergency situation.

(c) FEMA will provide guidance pursuant to Executive Order 12656 and will coordinate GMR plans and option packages of DOD and the civilian departments and agencies to ensure consistency and to identify areas where additional planning or investment is needed.

(d) During State 2, FEMA will coordinate department and agency recommendations for action and forward them to the National Security Advisor to make certain that consistency with the overall national strategy planning is achieved.

(e) Departments and agencies will refine their GMR plans to focus on the specific crisis situation. Costed option packages should be refined to identify the resources necessary for the current crisis, action taken to obtain those resources, and GMR plans implemented consistent with the seriousness of the crisis.

(f) At Stage 1, declaration of national emergency or war, the crisis is under the control of NSC or other central authority, with GMR being integrated into partial, full or total mobilization. At this point the more traditional mechanisms of resource mobilization are pursued, focusing on resource allocation and adjudication with cognizance of the essential civilian demand.

(g) Programs and plans developed by the departments and agencies under this guidance should be shared, as appropriate, with States, local governments and the private sector to provide a baseline for their development of supporting programs and plans.

§ 334.7 Reporting.

The Director of FEMA shall provide the President with periodic assessments of the Federal departments and agencies capabilities to respond to national security emergencies and periodic reports to the National Security Council on the implementation of the national security emergency preparedness policy. Pursuant to section 201(15) of Executive Order 12656, departments and agencies, as appropriate, shall consult and coordinate with the Director of FEMA to ensure that their activities and plans are consistent with current National Security Council guidelines and policies. An evaluation of the Federal departments and agencies participation in the graduated mobilization response program may be included in these reports.

Dated: January 9, 1990.

Antonio Lopez,

Associate Director, National Preparedness Directorate, Federal Emergency Management Agency.

[FR Doc. 90-1139 Filed 1-18-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 89-25]

Security for the Protection of the Public

January 16, 1990.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new provision to subparts A and B of its rules requiring proof of financial responsibility for passenger vessels. The new language provides that the Commission may permit, for good cause, deviations from the standard language prescribed in Forms FMC-132A, FMC-133A, FMC-132B and FMC-133B, which

are the surety bond and guaranty forms for financial responsibility vis-a-vis nonperformance and casualty. The new regulations will afford greater flexibility for the Commission to consider surety bonds and guaranties which, because of the particular circumstances of the applicant, may differ from the standard prescribed language.

DATE: Effective January 19, 1990.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796;

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing Public Law 89–777, 46 U.S.C. app. 817d and 817e, are contained in part 540 of 46 CFR. They prescribe requirements for certification of financial responsibility for passenger vessels against nonperformance or liability for death or injury (casualty). Codified in the rules are the following forms which are to be used by applicants for certificates:

FMC–132A—Passenger Vessel Surety Bond (46 CFR part 540) [Performance]
FMC–133A—Guaranty in Respect of Liability for Nonperformance, Section 3 of the Act
FMC–132B—Passenger Vessel Surety Bond (46 CFR part 540) [Casualty]
FMC–133B—Guaranty in Respect of Liability for Death or Injury, Section 2 of the Act

Under the present rules, applicants must submit surety bonds and guaranties using the language and format of the forms.

On December 15, 1989, the Commission published for comment in the **Federal Register**, 54 FR 51423, a Proposed Rule which would add the following provision to the relevant sections of the regulations: "The requirements of Form _____, however, may be amended by the Commission in a particular case for good cause." This change was proposed to allow the Commission flexibility in considering evidence of financial responsibility when particular, unusual circumstances may justify a deviation from the forms. The proposal was not intended to effect a lower or relaxed standard of evidence of financial responsibility, but rather to accommodate variations in arrangements which may be necessary in particular situations, lest a rigid adherence to form result in undue hardship on applicants.

No comments on the Proposed Rule were submitted. The Commission has determined to adopt the Proposed Rule as written as a Final Rule.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this Final Rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The Final Rule does not contain information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. Accordingly, OMB approval of the Final Rule is not required.

The Commission has determined that this rule is excepted from the 30-day effective date requirement of 5 U.S.C. 553 because it relieves a restriction from existing requirements.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716, the Federal Maritime Commission amends part 540 of title 46 of the Code of Federal Regulations as follows:

PART 540—[AMENDED]

1. The authority citation for part 540 continues to rad as follows:

Authority: 5 U.S.C. 553; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; sec. 43 of the Shipping Act, 1916, 46 U.S.C. app. 841a; sec. 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716.

2. Section 540.5 is amended to add a new sentence to paragraph (c) as follows:

§ 540.5 Insurance, guaranties, escrow accounts, and self-insurance.

* * * * *

(c) * * * The requirements of Form FMC–133A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

3. Section 540.6 is amended to add a new sentence to paragraph (a) as follows:

§ 540.6 Surety bonds.

(a) * * * The requirements of Form FMC–132A, however, may be amended by the Commission in a particular case for good cause.

* * * * *

4. Section 540.24 is amended to add new sentences to paragraphs (b) and (d) as follows:

§ 540.24 Insurance, surety bonds, self-insurance, guaranties, and escrow accounts.

* * * * *

(b) * * * The requirements of Form FMC–132B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

(d) * * * The requirements of Form FMC–133B, however, may be amended by the Commission in a particular case for good cause.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1245 Filed 1–18–90; 8:45 am]

BILLING CODE 6730–01–M

Proposed Rules

Federal Register
Vol. 55, No. 13
Friday, January 19, 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

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 30; Doc. No. 5407S]

General Crop Insurance Regulations; Fresh Market Sweet Corn Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new subpart, 7 CFR 401.138, to be known as the Fresh Market Sweet Corn Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on fresh market sweet corn in an endorsement to the general crop insurance policy.

DATE: *Comment date:* Written comments, data, and opinions on this proposed rule must be submitted not later than February 20, 1990 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as June 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program 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 action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new subpart to be known as 7 CFR 401.138, the Fresh Market Sweet Corn Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring fresh market sweet corn.

Upon publication of 7 CFR 401.138 as a final rule, the provisions for insuring sweet corn contained in 7 CFR 401.138 will supersede those provisions contained in 7 CFR part 449, the Fresh Market Sweet Corn Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 449 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will amend the title of 7 CFR part 449 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Fresh Market Sweet Corn Endorsement to 7 CFR part 401, FCIC proposes other changes in the provisions for insuring fresh market sweet corn as follows:

1. Section 4—Add language concerning crop growth stages and corresponding percentage guarantee (This information was previously contained in actuarial table).

2. Section 7—Unit Division provisions are included in this section. Language has also been added to require that the insured keep production separate by units. Units will be determined for each planting period. Additional language is added to clarify that a premium reduction will be effective if optional units are not selected.

3. Section 9—Remove the "minimum value amount" from the policy and add language referring to the actuarial table.

4. Sections 10 and 11 have been modified to accommodate a distinction for areas potentially having a "fall planting period" compared to areas which do not.

5. Section 12—The following terms are revised to clarify their meaning.

a. Tropical Depression

b. Marketable sweet corn

Recently, FCIC's Board of Directors adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for sweet corn, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be

available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Fresh market sweet corn.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.138 Fresh Market Sweet Corn Endorsement, effective for the 1991 and succeeding crop years, to read as follows:

§ 401.138 Fresh Market Sweet Corn Endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Fresh Market Sweet Corn Endorsement

1. *Insured Crop.*

a. The crop insured will be sweet corn planted for harvest as fresh market sweet corn, grown on insurable acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. In addition to the sweet corn not insurable in section 2 of the general crop insurance policy, we do not insure any acreage of sweet corn:

(1) Grown by any entity if that entity had not previously:

(a) Grown sweet corn for commercial sales; or

(b) Participated in the management of a sweet corn farming operation.

(2) Grown for direct consumer marketing;

(3) Which is not irrigated; or

(4) Unless the acreage is planted in rows far enough apart to permit mechanical cultivation.

c. Paragraph 2.e.(2) of the general crop insurance policy is not applicable to this endorsement.

2. *Causes of Loss.*

a. The insurance provided is against unavoidable loss of production resulting from one or more of the following causes occurring within the insurance period:

(1) Frost;

(2) Freeze;

(3) Hail;

(4) Fire;

(5) Tornado;

(6) Wind or excess precipitation occurring in conjunction with a cyclone; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to causes of loss specified in section 1 of the general policy as not insured, we will not insure against any loss of production due to:

(1) Disease

(2) Insect infestation; or

(3) Failure to market the sweet corn unless such failure is due to actual physical damage from a cause specified in subsection 2.a. of this endorsement.

3. *Report of Acreage, Share, and Practice (Acreage Report).* In addition to the information required by section 3 of the general crop insurance policy, you must report by unit for each planting period all the acreage of fall, winter, and spring-planted sweet corn (as applicable) in the county in which you have a share.

4. *Amount of Insurance.*

a. Subsection 4.d. of the general crop insurance policy is not applicable to this endorsement.

b. The amount of insurance per acre as shown on your policy confirmation is progressive by plant growth stage. The stages and amounts of insurance are:

(1) First stage (from planting until the beginning of tasselling, (tassel visible above the whorl)) is 65 percent of the final stage amount of insurance; and

(2) Final stage (from tasselling until the acreage is harvested) is the final stage amount of insurance (100 percent) as contained in the applicable actuarial table.

c. Any acreage of fresh sweet corn damaged in the first stage to the extent that we determine it should not be further cared for, will be deemed to have been destroyed, even though you continue to care for it. The amount of insurance for such acreage will not exceed the first stage guarantee.

5. *Annual Premium.* The annual premium amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times your share at the time of planting, applying any applicable premium adjustment percentage for which you may qualify as shown by the actuarial table.

6. *Insurance Period.* In lieu of the provisions in section 7 of the general crop insurance policy, insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the insured crop on the unit;

b. Discontinuance of harvest of sweet corn on the unit;

c. The date harvest should have started on the unit on any acreage which has not been harvested;

d. Completion of harvest on a unit; or

e. Final adjustment of a loss on a unit.

f. The calander date for the end of the planting period contained in the actuarial table.

7. *Unit Division.* All insurable sweet corn acreage, by planting period, that would otherwise be one unit, as defined in subsection 17.q. of the general crop insurance policy, may be divided into more than one unit if, for each proposed unit you maintain, written verifiable records of planted acreage and harvested production for at least the previous crop year. Acreage planted to the insured sweet corn crop must be located in separate, legally identifiable sections or, in the absence of section descriptions, on acreage identified by separate ASCS Farm Serial Numbers, provided:

a. The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The sweet corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units will cause those units to be combined for insurance purposes. If your sweet corn acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

8. *Notice of Damage or Loss.* In lieu of the notices required in subsections 8.a. (3) and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within three (3) days of the date of damage and indicate the cause of damage and whether a claim for indemnity is probable. In the event damage occurs within three (3) days of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If a notice has been given, we must be notified of the expected time of harvest at the time of notice or not later than 72 hours before harvest begins, whichever is applicable.

9. *Claim for Indemnity.*

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre for the stage of plant growth as defined in subsection 4.c.;

(2) Subtracting therefrom the total dollar value of sweet corn production to be counted (see subsection 9.c.); and

(3) Multiplying this result by your share.

b. In lieu of subsection 9.d. of the general crop insurance policy, if the information reported by you under section 3 of this endorsement results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

c. The total value of production to be counted for a unit will include the value for all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 42 pound crates of

sweet corn harvested on the unit by the minimum value shown for the planting period in the actuarial table; or

(b) The dollar amount obtained by multiplying the number of 42 pound crates of sweet corn sold by the price per crate received minus the allowable cost established by the actuarial table (subtraction of the allowable cost from the price received may not result in an amount per crate less than zero).

(2) The value of any appraised production will not be less than the dollar amount obtained by multiplying the appraised number of 42 pound crates of sweet corn by the minimum value per crate shown on the actuarial table for the planting period and will include:

(a) The value of any potentially marketable production;

(b) The value of unharvested production on harvested acreage and the value of any potential production lost due to uninsured causes; and

(c) Not less than the final stage dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause, or for which notice of damage was not given as required by section 8 of this endorsement and of the general crop insurance policy.

(3) Unharvested sweet corn damaged or defective due to insurable causes and which is not marketable sweet corn will not be counted as production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

d. A replanting payment is available in accordance with subsection 9.h. of the general crop insurance policy. The acreage to be replanted must have sustained a loss in excess of 25 percent of the plant stand. In lieu of subsection 9.h.(1)(c) of the general crop insurance policy, no replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year. The replanting payment will not exceed the product obtained by multiplying $65.00 per acre by your share.

10. *Cancellation and Termination Dates.*

	Cancellation and Termination Dates
State and County: Florida; Atkinson, Baker, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties Georgia and all Georgia counties south thereof which have a "fall planting period.".	July 31.
Alabama; all other Georgia Counties and South Carolina.	February 15.
All other states	April 15.

11. *Contract Changes.* Contract changes will be available at your service office by April 30 preceding the cancellation date for Florida and Georgia Counties with a fall planting period and by November 30 preceding the cancellation date in all other states.

12. *Meaning of Terms.* For the purposes of fresh market sweet corn crop insurance:

a. *"Crop year"* means the period within which the sweet corn is normally grown beginning July 15 and continuing through the harvesting of the spring-planted sweet corn. It is designated by the calendar year in which spring-planted sweet corn is normally harvested.

b. *"Cyclone"* means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1-minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

c. *"Freeze"* means the condition that exists when air temperatures over a widespread area remains at or below 32 degrees Fahrenheit, and causes damage to plant tissue.

d. *"Frost"* means a deposit or covering of minute ice crystals formed from frozen water vapor which causes damage to plant tissue.

e. *"Harvest"* means the final picking of marketable sweet corn on the unit.

f. *"Marketable sweet corn"* means the sweet corn which meets the standards for grading U.S. #1 or better and will withstand normal handling and shipping.

g. *"Planting period"* means the period of time within the dates set by the actuarial table, and is designated as "fall-planting period," "winter-planting period" or "spring planting period."

h. *"Plant stand"* means the number of live plants per acre before the plants were damaged due to insurable causes.

i. *"Potential production"* means the number of 42# crates of sweet corn which would have been produced per acre by the end of the insurance period.

j. *"Sweet corn"* means a type of corn with kernels containing a high percentage of sugar and adapted for table use.

k. *"Sweet corn grown for direct consumer marketing"* means sweet corn grown for the purpose of selling from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

Done in Washington, DC, on January 10, 1990.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-1225 Filed 1-18-90; 8:45 am]

BILLING CODE 3410-08-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Participation; Purchase, Sale and Pledge of Eligible Obligations

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed rule.

SUMMARY: Pursuant to its regulatory review program, the NCUA Board is proposing to amend §§ 701.22 ("Loan Participation") and 701.23 ("Purchase, Sale, and Pledge of Eligible Obligations") of NCUA's Regulations. The proposed amendment implements many of the comments received in response to NCUA's request for comments on these regulations. The proposed amendment is intended to clarify the regulations. It also broadens the loan particpation authority. Comment is requested on the proposal as well as on any other issues concerning loan participation and purchase, sale, and pledge of eligible obligations.

DATE: Comments must be received on or before April 19, 1990.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Julie Tamuleviz, Staff Attorney, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The proposed regulations contain the following paperwork requirements, all of which are also contained in the existing regulations:

Proposed Section 701.22

1. Section 701.22(b) requires that the board of directors establish a written participation loan policy.

2. Section 701.22(b)(2) requires an FCU to execute written loan participation agreements and retain the agreements at the FCU.

3. Section 701.22(c)(3) requires an FCU that is the loan originator to retain copies of the loan documents.

4. Section 701.22(d)(3) requires an FCU that is not an originating lender to retain a schedule of loans covered by the agreement.

Proposed Section 701.23

1. Section 701.23(b)(1) requires that the board of directors establish a written loan purchase policy.

2. Section 701.23(b)(2)(ii) requires a purchasing FCU to retain the purchase agreement and a schedule of loans covered by the purchase agreement.

3. Section 701.23(c)(1) requires the board of directors to establish a written loan sale policy.

4. Section 701.23(c)(1)(ii) requires a selling credit union to retain the loan sale agreement and a schedule of loans covered by the agreement.

5. Section 701.23(d)(1) requires the board of directors to establish a written pledge policy.

6. Section 701.23(d)(1)(ii) requires a pledging FCU to retain copies of the original loan documents.

7. Section 701.23(d)(1)(iii) requires a pledging FCU to retain the written pledge agreement.

The paperwork requirements will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act. Written comments on these requirements should be forwarded directly to the OMB Desk Officer at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, ATTN: Jerry Waxman.

Background Information

As part of its regulatory review program, the NCUA Board issued a request for comments on its regulations regarding loan participation and purchase, sale, and pledge of eligible obligations §§ 701.22 and 701.23 of NCUA's Rules and Regulations (12 CFR 701.22 and 701.23)). (See 53 FR 41613, 10/24/88.) The Board was interested in comment on whether there is a need to amend these regulations to enhance credit unions' authority to provide loan services to their members.

Eighteen comment letters were received: 2 from credit union trade associations; 6 from state credit union leagues; and 10 from Federal credit unions (FCU's).

Statutory and Regulatory Background

FCU's authority to acquire, dispose of, or assign a portion of the risk on member loans primarily comes from three provisions in the Federal Credit Union (FCU) Act.

Section 107(5)(E) of the Act (12 U.S.C. 1757(5)(E)) states:

> (5) [An FCU shall have power] * * * to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:
> * * * * *
> (E) Participation loans with other credit unions, credit union organizations, or financial organizations shall be in accordance with written policies of the board of directors. Provided, That a credit union which originates a loan for which participation arrangements are made in accordance with this subsection shall retain an interest of at least 10 per centum of the face amount of the loan.

This section of the FCU Act is implemented by § 701.22 of NCUA's Regulations (Loan Participation).

Section 107(13) of the FCU Act (12 U.S.C. 1757(13)) authorizes an FCU:

> In accordance with rules and regulations prescribed by the [NCUA] Board, to purchase, sell, pledge, or discount or otherwise receive or dispose of, in whole or in part, any eligible obligations (as defined by the [NCUA] Board) of its members * * * but no purchase may be made under authority of this paragraph if, upon the making of that purchase, the aggregate of the unpaid balance of notes purchased under authority of this paragraph would exceed 5 per centum of the unimpaired capital and surplus of the credit union.

This section of the Act is implemented by § 701.23 of NCUA's Regulations (Purchase, Sale, and Pledge of Eligible Obligations).

Section 107(14) (12 U.S.C. 1757(14)) gives an FCU authority:

> * * * To sell all or a part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to regulations of the [NCUA] Board.

The NCUA Board has generally interpreted this provision to apply only where a credit union is suffering a liquidity crisis.

Request for Comments

In its request for comments, the NCUA Board posed seven specific questions. These questions and the comments responding to them are summarized below. The issues raised by the commenters are addressed in the Section-by-Section Analysis.

1. "Is the current working definition of 'participation loan' in § 701.22(a)(1) satisfactory?" The Board elaborated further on this question in the request for comments, asking whether the term, instead of simply reflecting when the agreement was entered into, should also recognize the risk assigned and undertaken. Many of the commenters stated that the requirement in the definition of "participation loan" that the participation arrangement to entered into before the loan funds are disbursed is too restrictive. The primary concern was that an FCU needing more liquidity could not enter into participation arrangements on loans previously granted and disbursed.

2. "Should the term 'credit union organization' in § 701.22(a)(4) be redefined as 'an organization satisfying the requirements of § 701.27'?"

All commenters responding to this question answered in the affirmative.

3. "Are the regulatory restrictions on loan participation and purchase, sale and pledge of eligible obligations: (a) Unclear, (b) too complex? If so, how should they be changed?"

Commenters raised the following questions and issues:

a. How do the statutory restrictions (the 10% limitation in Section 107(5)(E) of the FCU Act (12 U.S.C. 1757(5)(E)) and the 5% limitation in section 107(13) of the FCU Act (12 U.S.C. 1757(13)) apply to open-end loans?

b. If a loan is purchased under § 701.23 and is later refinanced, is it subject to the Section 107(13) 5% limitation?

c. Is it necessary to require board of director or investment committee approval of all § 701.23 purchases?

d. One commenter recommended expanding loan participants to include "all lenders with financial stability assurance within the loan market, including financial institutions, insurance companies, retirement funds, investment funds, finance companies, CUSOs and other credit union organizations."

e. Questions were raised concerning the applicability of § 701.22 to real estate loans.

f. Commenters asked for guidance concerning the proper accounting treatment for § 701.22 and § 701.23 transactions.

g. It was recommended that NCUA delete the requirement that eligible obligations of members purchased under § 701.23 be refinanced within 60 days, and permit this to be a business decision of the board of directors.

4. "Do the current differences in regulation between participation loans and purchase, sale, and pledge of loans continue to make sense in today's economic environment?"

Few commenters directly responded to this question. One commenter addressed the possibility of combining the regulations, but concluded that this should not be done because of the different statutory restrictions in section 107(5)(E) and section 107(13). Another commenter stated that the differences should be maintained as they allow two methods to structure assignment of debt obligations.

5. "Does NCUA's current regulatory structure on participation loans and purchase, sale, and pledge of eligible obligations: (a) Limit FCU's ability to

make good loans to members; (b) create unnecessary liquidity problems for some FCU's; (c) force too much of an FCU's assets into lower yielding investments?"

Many commenters responded in the negative to this question. Commenters raised specific issues about the regulations (as listed above), but did not have major problems with the current regulatory structure. Seven commenters stated that requiring the participation agreement to be entered into before disbursement of loan funds did result in the problems set forth in this question. Commenters stated that this requirement creates unnecessary liquidity problems since an FCU cannot enter into a participation arrangement on previously granted and disbursed loans. As a result, this also has the effect of hindering an FCU's ability to respond to the needs of its members. Commenters stated further that this requirement could force FCU's with excess liquidity into lower yielding investments.

One commenter requested that § 701.23(b)(1)(iv), which limits the purchase of real estate-secured loans of nonmembers to the purchase of loans for the purpose of facilitating the purchasing credit union's packaging of a pool of such loans for sale or pledge on the secondary market, be amended to permit the purchase of real estate loans made to a member of any credit union without the requirement that the loans be packaged. The commenter stated that this amendment could lead to the development of a secondary market among credit unions.

Section 107(15)(A) of the FCU Act authorizes FCU investment in mortgage notes offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)). This section of the Securities Act establishes certain limitations on the authority, including that the note be "secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure." This authority was added to the FCU Act by the Secondary Mortgage Market Enhancement Act of 1984.

Section 107(15)(A) does not place any limitation on who the borrower on the note is or the terms or conditions of the note. The statute is worded broadly enough to permit FCU's to purchase real estate loans made by other lenders, even though the loan was made to a nonmember of the FCU and on terms or conditions that are not authorized for loans made by FCU's. Because this authority is difficult to reconcile with basic provisions of the FCU Act and NCUA's Rules and Regulations regarding membership and lending limitations, the NCUA Board has interpreted the authority to be limited to the situation where an FCU makes real estate-secured loans on an ongoing basis, and the purchase is for the purpose of completing a pool of loans for sale or pledge on the secondary market. This interpretation is incorporated into § 701.23(B)(1)(iv).

The Board requests comment on whether FCU's should be allowed greater flexibility to purchase mortgage loans made by other credit unions, and if so, under what conditions and/or limitations. The Board also asks commenters to consider whether increased flexibility in this area may adversely impact upon FCU's financial condition by resulting in the purchase of loans not otherwise eligible for sale on the general secondary market.

6. "What safety and soundness limits should be placed on an FCU's purchase of or risk-sharing in loans made by other credit unions?"

Commenters stated that the regulations currently contain sufficient safety and soundness limitations.

7. "Should different standards apply to natural person FCU's and to corporate FCU's?"

Six commenters responded to this issue. Three commenters stated that the same standards should apply to natural person and corporate FCU's. Three commenters indicated that different standards should apply to corporate FCU's, but did not suggest what these standards should be.

Regulatory Interpretation of the Term "Participation Loan"

As stated in the request for comments, NCUA has interpreted the term "participation loan" to mean arrangements made prior to disbursement of the loan proceeds. The Board believes that this interpretation may be too restrictive. Eliminating this restriction may assist FCU's with liquidity problems and will also provide FCU's with a means of spreading the risk on loans on its books. The proposed rule deletes this requirement. The Board recognizes that this deletion will result in some overlap between §§ 701.22 and 701.23. This is a result of the interplay between sections 107(13) and 107(5)(E) of the FCU Act. Both of these sections authorize the purchase and sale of a partial interest in certain loans. A loan purchase or sale will be viewed as permissible provided it is authorized by either § 701.22 or § 701.23.

Application of Statutory Limitations to Open-End Loans

One commenter asked how the limitations in section 107(5)(E) and section 107(13) of the FCU Act apply to open-end loans. Section 107(5)(E) requires an FCU that is an originating lender to retain an interest of at least 10 per centum of the face amount of each loan ("the 10% limitation"). This limitation is also set forth in § 701.22(c) of NCUA's Regulations.

Section 107(13) of the FCU Act limits the aggregate of the unpaid balances of loans purchased to 5% of unimpaired capital and surplus ("the 5% limitation"). This limitation is set forth in § 701.23(b)(3) of NCUA's Regulations. The regulation excepts certain types of loans from the 5% limitation.

The 10% and 5% limitations are difficult to apply to open-end loans. The possibilities considered by the Board, including applying the 10% limitation to the outstanding balance on the line of credit, may cause significant accounting problems. The NCUA Board requests comment on how the limitations should be applied to open-end loans. Since the limitations are in the FCU Act, they cannot be waived by the Board.

Section-by-Section Analysis

This analysis sets forth all proposed changes to the current regulations.

Section 701.22

Two commenters were apparently under the impression that § 701.22 did not apply to real estate loans. The Board would like to clarify that this is not the case. An FCU can participate in a real estate loan under § 701.22.

Proposed Section 701.22(a)—Definitions

Subparagraph 1—The definition of participation loan does not contain the requirement that the written commitment to participate precede disbursement of the loan funds. Should this deletion be maintained in the final amendment to § 701.22, provisions of the NCUA Accounting Manual on loan participations will be reviewed and any necessary changes made.

Subparagraph 2—The reference to "credit union organization" has been changed to "credit union service organization."

One commenter requested that the term "eligible organizations" be redefined to include "all financial lenders with financial stability assurance within the loan market, including financial institutions, insurance companies, retirement funds, investment funds, finance companies, CUSO and other credit union organizations." The current regulation limits participants to "eligible organizations," which is defined to be a credit union, credit union organization,

or financial organization. Section 107(5)(E) of the FCU Act limits participants to these entities. Section 701.22(a)(5) defines the term financial organization as any federally-chartered or federally-insured financial institution. The Board will consider further input on the definition of financial organization. However, it does not believe that insurance companies, retirement and investment funds, or finance companies come within the definition.

Subparagraph 3—No changes.

Subparagraph 4—The reference to "credit union organization" has been changed to "credit union service organization." The term "credit union service organization" is defined as "an organization satisfying the requirements of § 701.27." This provides FCU's with the additional authority to engage in loan participations with organizations that principally provide services to credit union members and credit unions, as opposed to organizations that provide services only to credit unions.

Subparagraphs 5 and 6—No changes.

Proposed Section 701.22(b)

Subparagraph 1—No changes.

Subparagraph 2—The phrase "prior to final disbursement" has been eliminated.

Subparagraph 3—No changes.

Proposed Sections 701.22 (c) and (d)

No changes.

Section 701.23

Proposed Section 701.23(a)

No changes.

Proposed Section 701.23(b)

Subparagraph (1)—One commenter asked that the § 701.23(b)(1)(i) requirement that eligible obligations of members purchased by an FCU be refinanced within 60 days unless they are loans that the FCU is empowered to grant be deleted, and that the refinancing decision be left to the discretion of the board of directors. The Board has not deleted the 60-day requirement, but requests comment on whether the 60-day period is unduly burdensome and what period would be reasonable. The Board notes that if the requirement for refinancing is deleted entirely, FCU's will be authorized to purchase loans under section 107(13) of the FCU Act that they are not authorized to make under section 107(5) of the FCU Act. This requirement is also retained in the participation regulation (§ 701.22(d)(1)).

Subparagraph (2)—A new paragraph has been added providing that purchases under § 701.23(b)(1)(i) (eligible obligations of members) need not be approved by the board of directors or investment committee. (*See* proposed § 701.23(b)(2)(i).) The NCUA Board recognizes that many FCU's purchase loans of their members from a third party with which they have established an ongoing business relationship, such as an automobile dealer. Board of director or investment committee approval of each loan purchased appears unnecessary. Such purchases must, of course, be within the board of directors' written purchase policies.

Subparagraph (3)—One commenter asked whether loans purchased under § 701.23(b)(1)(i), but subsequently refinanced, are subject to the 5% limitation. The proposed amendment clarifies that they are not.

Proposed Sections 701.23(c), 701.23(d), 701.23(e), and 701.23(f)

No changes.

The NCUA Board welcomes comment on this proposal as well as on any additional issues not covered herein.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that this proposed amendment does not have a significant impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal credit unions.

List of Subjects in 12 CFR Part 701

Loan participation, Participation, Loans, Purchase, sale, and pledge of eligible obligations.

By the National Credit Union Administration Board on January 11, 1990.

Becky Baker,

NCUA Board Secretary.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5) 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789 and Pub. L. 101-73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601-3610.

2. It is proposed that § 701.22 be revised to read as follows:

§ 701.22 Loan participation.

(a) For purposes of this section:

(1) *"Participation loan"* means a loan made in participation with one or more eligible organizations.

(2) *"Eligible organizations"* means a credit union, credit union service organization, or financial organization.

(3) *"Credit union"* means any Federal or state-chartered credit union.

(4) *"Credit union service organization"* means an organization satisfying the requirements of Section 701.27 of NCUA's Rules and Regulations.

(5) *"Financial organization"* means any federally-chartered or federally-insured financial institution.

(6) *"Originating lender"* means the participant with which the member contracts.

(b) Subject to the provisions of this section, any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, provided:

(1) No Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 20 per centum of the Federal credit union's unimpared capital and surplus;

(2) A written participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors or the investment committee, and retained in the Federal credit union's office. The agreement shall include provisions which identify the participation loan or loans.

(3) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) Originate loans only to its members;

(2) Retain an interest of at least 10 per centum of the face amount of each loan;

(3) Retain the original or copies of the loan documents; and

(4) Obtain approval of the loan from the credit committee or loan officer.

(d) A participant Federal credit union that is not an originating lender shall:

(1) Participate only in loans it is empowered to grant;

(2) Participate in participation loans only if made to its own members or members of another participating credit union;

(3) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

3. It is proposed that § 701.23 be revised to read as follows:

§ 701.23 Purchase, Sale, and Pledge of Eligible Obligations.

(a) For purposes of this section

(1) *"Eligible obligation"* means a loan or group of loans;

(2) *"Student loan"* means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, State govenment, or any agency of either.

(b) Purchase. (1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either (A) they are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to § 701.21 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortgage market.

(2) A Federal credit union may make purchases in accordance with paragraph (b), provided:

(i) The board of directors or investment committee approves the purchases. Eligible obligations of members purchased in accordance with paragraph (b)(1)(i) are not subject to this requirement; and

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchaser's office.

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) shall not exceed 5 percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with paragraph (b)(1)(iii), real estate loans purchased in accordance with paragraph (b)(1)(iv), and eligible obligations purchased in accordance with paragraph (b)(1)(i) that are refinanced by the purchaser so that they are loans it is empowered to grant shall not be included in considering this 5 percent limitation.

(c) Sale. A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii), student loans purchased in accordance with paragraph (b)(1)(iii), and real estate loans purchased in accordance with paragraph (b)(1)(iv), within the limitations of the board of directors' written sale policies, provided:

(1) The board of directors or investment committee approves the sale, and

(2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) Pledge. (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii), student loans purchased in accordance with paragraph (b)(1)(iii), and real estate loans purchased in accordance with paragraph (b)(1)(iv), within the limitations of the board of directors' written pledge policies, provided:

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) Servicing. A Federal credit may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) 10 Percent Limitation. The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

[FR Doc. 90-1156 Filed 1-18-90; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-263-AD]

Airworthiness Directives; Boeing Model 707/720 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to all Boeing Model 707/720 series airplanes, which would require incorporation of certain structural modifications. This proposal is prompted by reports of recent incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design life goal. These incidents jeopardized the airworthiness of the affected airplanes. These conditions, if not corrected, could result in a degradation in the structural capabilities of the affected airplanes. This action also reflects FAA's decision that long term continued operational safety should be assured by actual modification of the airframe rather than repetitive inspection.

DATE: Comments must be received no later than April 9, 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. 89-NM-263-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 the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Shardul R. Panchal, Airframe Branch, ANM-120S; telephone (206) 431-1954. Mailing address: FAA, Northwest

Mountain Region, Transport Airplane Directorate, 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 89–NM–263–AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

In April 1988, a high-cycle Boeing Model 737 suffered major structural damage in flight. The airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on the high-cycle airplanes in its fleet revealed that two other airplanes had extensive fatigue cracking and corrosion. These airplanes were taken out of service.

In June 1988, the FAA sponsored a conference on aging airplanes. It became obvious, because of the huge increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes, that older airplanes will continue to be operated rather than be retired. Because of the problems revealed by the accident described above, it was generally agreed that increased attention needed to be focused on this aging fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America committed to identifying and implementing procedures to ensure continuing structural airworthiness of aging transport category airplanes. An Aging Aircraft Task Force, with representatives from the aircraft operators, manufacturers, regulatory authorities, and other aviation representatives, was established in August 1988. The objective of the task force was to sponsor "Working Groups" to (1) Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes, (2) develop corrosion-directed inspections and prevention programs, (3) review the adequacy of each operator's structural maintenance program, (4) review and update the Structural Supplemental Inspection Documents (SSID), and (5) assess repair quality.

The Working Group assigned to review Boeing Model 707/720 series airplanes completed its work on Item (1), above, in June 1989. The Working Group's proposal is contained in Boeing Document Number D6–54996, "Aging Airplane Service Bulletin Structural Modification Program—Model 707–100/–200/–300/–300B/–300C/–400 and 720/720B." The FAA has reviewed and approved this Document.

The Document references modifications described in 141 service bulletins and recommends they be incorporated in the applicable Boeing Model 707/720 airplanes. In addition, the Document describes additional modifications which will be included in upcoming revisions to those service bulletins. These modifications consist of 72 modifications to the wing, 49 modifications to the fuselage, 5 modifications to the doors, 13 modifications to the empennage, 1 modification to the landing gear, and 1 modification to the inboard engine strut. They include structural reinforcement/replacement of skins, stringers, bulkheads, frames, ribs, spars, and other structural members. Completing these modifications will reduce the possibility for major structural failure.

Since fatigue cracking and corrosion are likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require modification of Boeing Model 707/720 series airplanes at their economic design goal or, in some cases, at a specific time, in accordance with the Boeing Document previously described.

The "economic design goal" of an airplane is typically considered to be the period of service, after which a substantial increase in the maintenance costs is expected to take place in order to assure continued operational safety. The economic design goal for the Boeing Model 707/720 airplane is 20 years for structural problems associated with environmental deterioration; and 20,000 flight cycles for the structural problems associated with fatigue damage on the Model 707; or 30,000 flight cycles for structural problems associated with fatigue damage on the Model 720.

The proposed compliance time for implementation of the mandatory structural modification program is upon reaching the applicable economic design life goal or within 4 years after the effective date of the AD. This time interval was based upon the ability of the manufacturer to provide the parts necessary for the modification, and the time necessary to incorporate the modifications.

In the interim, safety will be provided by various means currently in place that are considered satisfactory to detect damage prior to the occurrence of an unsafe condition. These include operators' on-going basic maintenance programs; continuing inspections required by numerous previously issued AD's; the Supplemental Structural Inspection Document (SSID) program, previously mandated by AD 85–12–01–R1, Amendment 39–5439 (51 FR 36002; October 8, 1986); the FAA's increased emphasis on surveillance of operators' maintenance programs and procedures; and the FAA's participation in programs to physically inspect high-time airplanes during scheduled heavy maintenance.

There are approximately 400 Model 707/720 series airplanes of the affected design in the worldwide fleet. It is estimated that 74 airplanes of U.S. registry would be affected by this AD within the initial threshold of 4 years. The cost to modify each airplane is estimated to be $1,040,000. This cost includes the price of modification kits, which is $380,000 per airplane, and the estimated number of manhours to accomplish the modifications, which is 16,500 manhours at $40 per manhour. It does not include the cost of downtime, planning, set up, familiarization, or tool acquisition costs. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $76,960,000 over the 4 year time period.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification.

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 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 707/720 series airplanes, listed in Boeing Document No. D6-54996, dated November 7, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural failure, accomplish the following:

A. Except as provided below, prior to reaching the incorporation thresholds listed in Boeing Document No. D6-54996, dated November 7, 1989, "Aging Airplane Service Bulletin Structural Modification Program—Model 707-100/-200/-300/-300B/-300C/-400 and 720/720B," or within the next 4 years after the effective date of this AD, whichever occurs later, accomplish the structural modifications listed in Section 3 of Boeing Document No. D6-54996, dated November 7, 1989. Service bulletins whose threshold is specified in Boeing Document D6-54996, dated November 7, 1989, by a calendar date must be modified by that date in lieu of the 4 years specified in this paragraph.

Note: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

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

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

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

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

Issued in Seattle, Washington, on January 9, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1235 Filed 1-18-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-264-AD]

Airworthiness Directives: Boeing Model 747 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 certain Boeing Model 747 series airplanes, which would require inspection, and replacement of any defective rod-end bearings, if necessary, of the Number 3 left and right entry door emergency evacuation slide girt bar mechanism. This proposal is prompted by reports of failed rod-end bearings that are a part of the girt bar mechanism that locks the escape slide in place during deployment. This condition, if not corrected, could prevent the deployment of the escape slide thus jeopardizing emergency evacuation of the airplane.

DATE: Comments must be received no later than March 7, 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. 89-NM-264-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. Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. 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 89-NM-264-AD." The

post card will be date/time stamped and returned to the commenter.

Discussion

The manufacturer reported that failed rod-end bearings of the Number 3 entry door emergency evacuation slide girt bar mechanism have been found on production Model 747 series airplanes. The rod-end bearings are a part of the mechanism that locks the girt bar in place on the airplane during slide deployment. The failures have all occurred on components that do not meet design specifications. Failed rod-end bearings would prevent deployment of the evacuation slide, thus jeopardizing an emergency evacuation of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–52A2217, dated October 19, 1989, which describes procedures for inspection of the girt bar mechanism, to determine if the rod-end bearings are failed or undersize, and replacement, if necessary.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require inspection of the Number 3 left and right entry door girt bar mechanism for failed or defective rod-end bearings, and replacement of the bearings, if necessary, in accordance with the service bulletin previously described.

There are approximately 55 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 4 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $800.

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 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 747 series airplanes, identified in Boeing Alert Service Bulletin 747–52A2217, dated October 19, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure proper operation of the Number 3 left and right entry door emergency evacuation slide, accomplish the following:

A. Within 90 days after the effective date of this AD, inspect the Number 3 left and right entry door girt bar mechanism, to determine if the rod-end bearings are defective. If any rod-end bearing is defective or has failed, prior to further flight, replace the rod-end bearing with a serviceable part, in accordance with Boeing Alert Service Bulletin 747–52A2217, dated October 19, 1989.

B. Within 7 days after completion of the inspection, required by paragraph A., above, report all failed and/or defective rod-end bearings detected during the inspection to the Manager, Seattle Manufacturing Inspection District Office, 7300 Perimeter Road South, Seattle, Washington 98108.

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 January 5, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1236 Filed 1–18–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 89–NM–254–AD]

Airworthiness Directives: Boeing Model 727 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 certain Boeing Model 727 series airplanes, which would require inspection to detect corrosion in the aft cargo compartment belly skin panels, doublers, and triplers, and repair, if necessary. This proposal is prompted by reports of corrosion in the cold bonded skin, doublers, and triplers in the skin panels beneath the aft cargo compartment floor. This condition, if not corrected, could result in degrading the skin panels' structural integrity and could lead to possible depressurization of the cabin.

DATE: Comments must be received no later than March 3, 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. 89–NM–254–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: Kathi Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525. 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 89-NM-254-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of corrosion in the cold bonded skin, doublers, and triplers in the skin panels beneath the aft cargo compartment floor on Boeing Model 727 series airplanes. The corrosion, if not detected could result in degrading the skin panels' structural integrity and could lead to possible depressurization of the cabin.

FAA has reviewed and approved Boeing Service Bulletin 727-53-0085, Revision 3, dated September 28, 1989, which describes procedures for inspections to detect corrosion, and repairs of the affected skin panels.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections to detect corrosion in the aft cargo compartment belly skins, doublers, and triplers, and repair, if necessary, in accordance with the service bulletin previously described.

The inspection of this area of the skin panels for control of corrosion that would be required by this proposal is also part of the recommendations made by the Aging Fleet Task Force, and is specified in the recently developed "Corrosion Prevention and Control Program" (Boeing Document D6-54929), the subject of other FAA rulemaking currently in development. However, the ultrasonic inspection for voids proposed by this AD action is not included in the Corrosion Control Program.

The optional terminating modification provided by paragraph G. of this proposal (replacement of certain skin panels) is part of the recommendations made by the Model 727 Structures Working Group, a part of the Aging Fleet Task Force. The FAA has issued separate rulemaking (Docket 89-NM-60-AD; 54 FR 22302; May 23, 1989) which proposes to mandate this modification.

There are approximately 550 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 430 airplanes of U.S. registry would be affected by this AD, that it would take approximately 402 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 $6,914,400.

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 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 727 series airplanes, listed in Boeing Service Bulletin 727-53-0085, Revision 3, dated September 28, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect corrosion in the aft cargo compartment belly skin panels doublers, and triplers, accomplish the following:

A. Within the next 15 months after the effective date of this AD, conduct an internal and external close visual inspection for corrosion of the skin panels, doublers, and triplers located between body stations (BS) 950 and BS 1183 and stringers S-26L and S-26R. Perform the inspections in accordance with parts II.A and II.B of Boeing Service Bulletin 727-53-0085, Revision 3, dated September 28, 1989 (hereafter referred to as "the service bulletin"). Repeat the external inspection at intervals not to exceed 15 months. Repeat the internal inspection and apply corrosion inhibitor at intervals not to exceed 36 months.

B. If no corrosion or minor corrosion, as defined in Part 11.A.2. of the service bulletin, is detected, prior to further flight, perform an ultrasonic inspection for voids in accordance with Part II.C of the service bulletin.

1. If no voids and no corrosion are detected, prior to further flight, reseal the doublers and triplers in accordance with Figure 3 of the service bulletin or replace the affected skin panel in accordance with Part VI. of the service bulletin.

2. If voids or minor corrosion are detected, perform a Low Frequency Eddy Current (LFEC) inspection, to determine the amount of material loss, in accordance with part II.D. of the service bulletin.

C. If major corrosion, as defined in parts II.A.3. or II.B. of the service bulletin, is detected, or material loss is 10 percent or more of the skin, doubler, or tripler thickness,

prior to further flight, repair or replace the affected skin panel in accordance with parts V. or VI. of the service bulletin.

D. If material loss is less than 10 percent of the skin, doubler, or tripler, prior to further flight, repair in accordance with Figure 1 of the service bulletin.

E. For repairs made in accordance with parts III. or IV. of the service bulletin, within 15 months after the repair is made, perform a LFEC inspection for corrosion progression in accordance with part II.D. of the service bulletin. Repeat the inspections at intervals not to exceed 15 months.

F. Blind fasteners installed in accordance with part IV. of the service bulletin are to be used as an interim repair only. The blind fasteners have a life of 10,000 landings before they must be replaced with solid fasteners in accordance with part IV. of the service bulletin. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to the effective date of this AD must be replaced prior to accumulating 10,000 landings or within 3,000 landings after the effective date of this AD, whichever occurs later.

G. Replacement of the skin panels in accordance with part VI. of the service bulletin constitutes terminating action for the inspection requirements of this AD for those panels.

H. 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.

I. 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 January 2, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-1237 Filed 1-18-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-23]

Proposed Alteration of Transition Area; Chantilly, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to modify the 700 foot transition area established for the Leesburg Municipal Airport (Godfrey Field), Leesburg, VA due to the revision and establishment of Standard Instrument Approach Procedures (SIAPs) to descriptions this airport. In addition, minor changes to the geographic position of airports listed in the transition area description are being updated to reflect the actual location of these airports. The intent of this proposed revision is to ensure that aircraft arriving and departing this airport, operating under instrument meteorological conditions, are separated from other aircraft operating under visual flight rules (VFR).

DATES: Comments must be received on or before February 21, 1990.

ADDRESSES: Send comments on the rule in triplicate to:

Edward R. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 89-AEA-23, 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, Jamaica, 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. 89-AEA-23". 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 amend the Chantilly, VA, 700 foot transition area to accommodate revisions to the SIAPs to this airport. Additionally, minor changes to the geographic coordinates for each airport listed in the transition area description are being made. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulaton 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. 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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Chantilly, VA [Amended]

Change the following airport coordinates:

Dulles International Airport from lat. 38°56'40" N., long. 77°27'24" W." to lat. 38°56'39" N., long. 77°27'26" W.";

Manassas Municipal Airport (Harry P. Davis Field) from lat. 38°43'30" N., long. 77°31'00" W." to lat. 38°43'17" N., long. 77°30'57" W.";

Change "within an 8-mile radius of the center of Leesburg Municipal Airport (Godfrey Field), Leesburg, VA, lat. 39°04'37" N., long. 77°33'25" W." to read "within an 8.5-mile radius of the center of Leesburg Municipal Airport (Godfrey Field), Leesburg, VA, lat. 39°04'45" N., long. 77°33'30" W.; within 3.5 miles either side of the Leesburg Municipal Airport Runway 17 Localizer Course, extending from the 8.5-mile area to 12 miles north of the airport."

Issued in Jamaica, New York, on December 29, 1989.

John D. Canoles,

Manager, Air Traffic Division.

[FR Doc. 90-1238 Filed 1-18-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Proposed Customs Regulations Amendment Relating to the Country of Origin Marking of Native American-Style Arts and Crafts; Extension of Time for Comments

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

ACTION: Extension of time for comments.

SUMMARY: This notice extends the period of time within which interested members of the public may submit comments concerning the proposed amendment to the Customs Regulations concerning the country of origin marking of arts and crafts which incorporate Native American design motifs, materials or construction. A notice inviting public comment on the proposal was published in the **Federal Register** on August 31, 1989 (54 FR 36039), and comments were to have been received on or before October 2, 1989. A request has been received to reopen the comment period and accept comments for a period of 60 additional days. The request points out that the issue is of major importance to tribes and individual Native Americans. Because of the poverty and geographic remoteness which characterize Indian country, few tribes or individuals were aware of the proposed rule. The additional comment period will provide an opportunity for further tribal and individual comment. In view of the arguments presented, the request is granted.

DATE: Comments will be accepted if received on or before March 20, 1990.

ADDRESS: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, Room 2119, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Lorrie Rodbart, Value, Special Programs and Admissibility Branch, (202) 566-5765.

Dated: January 5, 1990.

Stuart P. Seidel,

Acting Director, Office of Regulations and Rulings.

[FR Doc. 90-1365 Filed 1-18-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-630-08-4111-02]

RIN 1004-AA66

43 CFR Part 3160

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 7: Disposal of Produced Water

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would issue Onshore Oil and Gas Order No. 7 in accordance with 43 CFR 3164.1—Special provisions. When published as a final rulemaking, the Order will supersede the Notice to Lessees and Operators of Federal and Indian (except Osage Tribe) Oil and Gas Leases (NTL) 2B, *Disposal of Produced Water*. This Order as proposed will supplement requirements found in 43 CFR 3162.5-1 Environmental obligations, by specifying procedural requirements for the submittal of and information to be contained in an application for approval of proposed disposal of produced water, the design, construction, and maintenance requirements for an acceptable disposal facility, the minimum standards necessary to satisfy those requirements, and the procedure for requesting variances from the minimum standards. This proposed Order also would identify violations, corrective actions, normal abatement periods, and those enforcement actions that would result when violations of the requirements are not abated in a timely manner.

DATE: Comments should be submitted by March 20, 1990. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sie Ling Chiang (202) 653-2127.

SUPPLEMENTARY INFORMATION: The regulations in 43 CFR 3164.1 authorize the issuance of Onshore Oil and Gas

Orders when necessary to implement and supplement specific provisions of the regulations. All Orders are to be promulgated through the rulemaking process and, when issued in final form, apply on a nationwide basis. A table included in 43 CFR 3164.1 shows all existing or former Orders. This proposed rulemaking would result in the publication of Order No. 7, Disposal of Produced Water. This Order is intended to supplement the provisions of § 3162.5–1—Environmental obligations, as well as specific terms of Federal and Indian onshore oil and gas leases.

The current industry procedure in the disposal of water produced in conjunction with oil and gas production from Federal and Indian leases was established by the Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL) 2B, *Disposal of Produced Water*, issued in 1976 by the former Conservation Division of the U.S. Geological Survey. This proposed Order, when issued as a final rulemaking, will supersede NTL–2B.

There are several reasons for issuing proposed Oil and Gas Order No. 7. First, Oil and Gas Orders, as provided for by regulation, implement and supplement specific provisions of the regulations on a natonwide basis. The regulations also allow for the use of Ntoices to Lessees and Operators to provide instructions on a State or district basis.

In addition, there is a need to update the requirements found in NTL–2B. NTL–2B specifies the requirements for application and approval of facilities for disposal of produced water through underground injection, in pits, or by other approved methods. A jurisdictional conflict between the Bureau of Land Management and the Environmental Protection Agency over the regulation of injection wells occurred the Environmental Protection Agency implemented its Underground Injection Control program as mandated by the Safe Drinking Water Act of 1974. As a result of negotiations between the two agencies, the Environmental Protection Agency was advised on June 1, 1983, of the Bureau of Land Mangement's decision to defer to the Environmental Protection Agency or the primacy State in the permitting of underground injection in Class II wells. That part of NTL–2B addressing the regulation or control of injection wells has been revised and incorporated in this proposed Order.

In January 1985, the Bureau of Land Management established a Task Force to conduct a detailed review and analysis of provisions previously incorporated into 43 CFR part 3160 to implement the Federal Oil and Gas Royalty Management Act of 1982. The Task Force also made revisions to 43 CFR part 3160 which were published in the **Federal Register** as a final rulemaking on February 20, 1987 (52 FR 5384). In addition, the Task Force provided several recommendations for improving the overall effectiveness of the Bureau of Land Management's inspection and enforcement program for oil and gas operations. Among those recommendations accepted by the Bureau of Land Management and approved by the Assistant Secretary of the Interior—Land and Minerals Management was to provide necessary guidance and standards through the development and issuence of Onshore Oil and Gas Orders. All such Orders are to contain those standards against which inspections will be made and the enforcement actions that will result when certain major violations are found and when violations are not abated in a timely manner. This proposed Order specifies the requirements standards for the design, construction, and maintenance of disposal facilities; identifies violations, corrective actions, abatement periods, and enforcement action for each violation.

This proposed Order is not entirely independent of other Orders. In addressing the submittal for approval of an injection well, a reference was made to Oil and Gas Order No. 1, *Approval of Operations*. Approval and drilling inspection of such wells will be conducted in accoardance with Oil and Gas Order No. 2, *Drilling Operations*.

The proposed Order consists of four sections and an attachment. In addition, the Order contains new language to clarify approval authority, especially with respect to off-lease disposal. With respect to off-lease disposal, the Bureau only has regulatory authority over the removal of produced water from a Federal or Indian lease. As stated previously, regulatory authority for injection wells is primarily the responsibility of the Environmental Protection Agency or the primacy State. However, BLM will continue to exercise regulatory authority over injection wells to satisfy BLM statutory responsiblities and requirements including but not limited to drilling safety, downhole integrity, and protection of mineral and surface resources. Therefore, application requirements for such wells have been kept to a minimum in this Order by referencing Orders No. 1 and No. 2. Requirements and minimum standards established under section III of this Order are primarily for the submittal of applications and the design, construction, and maintenance of disposal pits. Section IV provides relief procedures for applicants in those instances where a variance is justified. The attachment includes diagrams of facility designs that are acceptable to the Bureau of Land Management.

The principal authors of this proposed rulemaking are Sie Ling Chiang, Washington Office; Jamie Sparger, Vernal District Office, Utah; Armando Lopez, Roswell District Office, New Mexico; T.R. Beaven, Wyoming State Office; and Bob Schooler, Jackson District Office, Mississippi, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

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

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

The proposed Order will have no substantial economic effects, since its requirements reflect the operating practices currently followed by prudent operators in the disposal of produced water under Notice to Lessees and Operators 2B. The major requirements contained in ths proposed Order are essentially those that have been required in the past by the Department of the Interior and impose the same burden on all lessees and operators, regardless of size, on lands where the disposal of produced water is under the jurisdiction of the Bureau of Land Management.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 43 CFR Part 3160

Enviromental protection-Water pollution control, Government contracts, Indian-lands, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Under the authorities cited below, it is proposed to amend part 3160, group 3100, subchapter C, chapter II of title 43

of the Code of Federal Regulations as set forth below:

PART 3160—[AMENDED]

1. The authority citation for part 3160 is revised to read:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), the Act of March 3, 1909, as amended (30 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 28, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.) the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the Act of December 12, 1980 (43 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–98), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.).

2. Section 3164.1 is amended by revising the table which is part of paragraph (b):

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No.	Subject	Effective Date	FR Reference	Supersedes
1.	Approval of Operations	Nov. 21, 1983	48 FR 48916 and 48 FR 56226	NTL–6
2.	Drilling	Dec. 19, 1988	53 FR 46790	None
3.	Site Security	Mar. 27, 1989	54 FR 8056	NTL–7
4.	Measurement of Oil	Aug. 23, 1989	54 FR 8086	None
5.	Measurement of Gas		54 FR 8100	None
	(New facilities greater than 200 MCF production)	Mar. 27, 1989		
	(Existing facility greater than 200 MCF production)	Aug. 23, 1989		
	(Existing facility less than 200 MCF production)	Feb. 26, 1990		
6.	Hydrogen Sulfide Operations			None
7.	Disposal of Produced Water			NTL–2B

Note: Numbers to be assigned sequentially by the Washington Office as proposed Orders are prepared for publication.

Dated: July 13, 1989.

James M. Hughes,

Deputy Assistant Secretary of the Interior.

Appendix—Text of Oil and Gas Order

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

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

Onshore Oil and Gas Order No. 7

Disposal of Produced Water

I. Introduction.

A. *Authority.* This Order is established pursuant to the authority granted to the Secretary of the Interior by various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. Said authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

As directed by the Federal Onshore Oil and Gas Leasing Reform Act of 1987, for National Forest lands the Secretary of Agriculture shall regulate all surface-disturbing activities and shall determine reclamation and other actions required in the interest of conservation of surface resources.

Specific authority for the provisions contained in this Order is found at § 3162.3, Conduct of Operations; § 3162.5, Environment and Safety; and Subpart 3163, Noncompliance and Assessments.

B. *Purpose.* This Order supersedes Notice to Lessees and Operators of Federal and Indian Oil and Gas Leases (NTL–2B), Disposal of Produced Water. The purpose of this Order is to specify informational and procedural requirements for submittal of an application for the disposal of produced water, and the design, construction and maintenance requirements for pits as well as the minimum standards necessary to satisfy the requirements and procedures for seeking a variance from the minimum standards. Also set forth in this Order are certain specific acts of noncompliance, corrective actions required and the abatement period allowed for correction.

C. *Scope.* This Order is applicable to produced water from completed wells on Federal and Indian (except Osage) oil and gas leases. It does not apply to disposal facilities on non-Federal leases committed to communitized or unitized areas.

II. *Definitions*

The following defintions are used in conjuction with the issuance of this Order.

A. *"Authorized Officer"* means any employee of the Bureau of Land Management authorized to perform duties described in 43 CFR Groups 3000 and 3100.

B. *"Federal Lands"* means all lands and interests in lands owned by the United States which are subject to the mineral leasing laws, including mineral resources or mineral estates reserved to the United States in the conveyance of a surface or nonmineral estate.

C. *"Free-board"* means the vertical distance from the top of the fluid surface to the lowest level of the top of the pit.

D. *"Injection Well"* means a well used for the disposal of produced water or for enhanced recovery operations.

E. *"Lease"* means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas (see 43 CFR 3160.0–5).

F. *"Lessee"* means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0–5).

G. *"Lined Pit"* means an excavated and/or bermed area that is required to be lined with natural or manmade material that will prevent seepage. Such pit shall also include a leak detection system.

H. *"Unlined Pit"* means an excavated and/or bermed area that is not required to be lined. An unlined pit may contain a liner but does not require a leak detection system.

I. *"Major Violation"* means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

J. *"Minor Violation"* means noncompliance that does not rise to the level of a *"major violation"* (see 43 CFR 3160.0–5).

K. *"National Pollutant Discharge Elimination System"* (NPDES) means a program administered by the Environmental Protection Agency or primacy State that requires permits for the discharge of pollutants from any point source into navigable waters of the United States.

L. *"Operator"* means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof (see 43 CFR 3610.0–5).

M. *"Toxic Constituents"* means substances in produced water that, when found in toxic concentrations specified by Federal or State regulations, have harmful effects in plant or animal life. These substances include but are not limited to arsenic (As), barium (Ba), cadmium (Cd), hexavalent chromium (hCr), total chromium (tCr), lead (Pb), mercury (Hg), zinc (Zn), selenium (Se), benzene, toluene, ethylbenzene, and xylenes.

N. *"Underground Injection Control (UIC)"* program means a program administered by the EPA, primacy State or Indian Tribe under the Safe Drinking Water Act to ensure that subsurface waste injection does not endanger underground sources of drinking water.

O. *"Produced Water"* means water produced in conjunction with oil and gas production.

III. Requirements

A. General Requirements

Operators of onshore Federal and Indian oil and gas leases shall comply with the requirements and standards of this Order for the protection of surface and subsurface resources. Except as provided under section III.D.4 of this Order, the operator may not dispose of produced water unless and until approval is obtained from the authorized officer. All produced water from Federal/Indian leases must be disposed of by (1) injection into the subsurface; (2) discharging into pits; or (3) other acceptable methods approved by the authorized officer. Injection is the preferred method of disposal. Operators are encouraged to contact the appropriate authorized officer before filing an application for disposal of produced water so that the operator may be apprised of any existing agreements outling cooperative procedures between the Bureau of Land Management and either the State/Indian Tribe or the Environmental Protection Agency concerning Underground Injection Controll permits for injection wells, and of any potentially significant adverse effects on surface and/or subsurface resources. The approval of the Environmental Protection Agency or a State/Tribe shall not be considered as granting approval to dispose of produced water from leased Federal or Indian lands until and unless BLM approval is obtained. Applications filed pursuant to NTL–2B and still pending approval shall be supplemented or resubmitted if they do not meet the requirements and standards of this Order. The disposal methods shall be approved in writing by the authorized officer regardless of the physical location of the disposal facility. Existing NTL–2B approvals will remain valid. However, upon written justification, the authorized officer may impose additional conditions or revoke any previously approved disposal permit, if the authorized officer, for example, finds that an existing facility is creating environmental problems, or that an unlined pit should be lined.

Upon receipt of a completed application the authorized officer shall do one of the following within 30 days: (1) approve the application as submitted or with appropriate modification or conditions; (2) return the application and advise the applicant in writing of the reasons for disapproval; or (3) advise the applicant in writing of the reasons for delay and the expected final action date.

B. Application and Approval Authority

1. On-lease Disposal. For water produced from a Federal/Indian lease and disposed of on the same Federal/Indian lease, or on other committed leases if in a unit or communitized area, the approval of the disposal method is usually granted in conjunction with the approval for the disposal facilities. An example would be the approval of a proposal to drill an injection well to the used for the disposal of produced water from a well or wells on the same lease.

a. When approval is requested for onlease disposal of produced water into an injection well, the operator shall submit a Sundry Notice, Form 3160.0–5. Information submitted in support of obtaining the Underground Injection Control permit shall be accepted by the authorized officer in approving the disposal method, provided the information submitted in support of obtaining such a permit satisfies all applicable Bureau of Land Management statutory responsibilities (including but not limited to drilling safety, down hole integrity, and protection of mineral and surface resources) and requirements.

b. When approval is requested for disposal of produced water in a lined or unlined pit, the operator shall submit a Sundry Notice, Form 3160–5. the operator shall comply with all the applicable Bureau of Land Management requirements and standards for pits established in this Order. On National Forest lands, where the proposed pit location creates new surface disturbance, the authorized officer shall not approve the proposal without Forest Service concurrence.

2. *Off-lease Disposal.* a. On Leased or Unleased Federal/Indian Lands. The purpose of the off-lease disposal approval process is to ensure that the removal of the produced water from a Federal or Indian oil and gas lease is proper and that the water is disposed in an authorized facility. Therefore, the operator shall submit an application for removal of the water together with a copy of the authorization for the disposal facility. If the authorized officer has a copy of the approval for the receiving facilities on file, he/she may determine that a reference to that document is sufficient. Where an associated right-of-way authorization is required, the information for the right-of-way authorization may be incorporated in the Sundry Notice, and the Bureau of Land Management will process both authorizations simultaneously for Bureau lands.

1. When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice (Form 3160–5), along with a copy of the Underground Injection Control permit issued to the operator of the injection

well, unless the well is authorized by rule under 40 CFR part 144. The operator of the injection well shall have an authorization from the Bureau of Land Management for disposing of the water into the injection well, under Title V of the Federal Land Policy and Management Act (FLPMA) and 43 CFR part 2800, or a similar authorization from the responsible surface management agency. Where surface disturbance is involved in transporting the produced water from the lease to the injection well, e.g., building a road or laying a pipeline, a right-of-way authorization under title V of FLPMA and 43 CFR part 2800 from the Bureau of Land Management or a similar permit from the responsible surface management agency also shall be obtained by the operator of the injection well or the responsible party.

2. When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and is to be disposed of into a lined or unlined pit located on another lease or unleased Federal lands, the operator shall submit to the authorized officer a Sundry Notice, Form 3160–5. The operator of the pit is required to have an authorization from the Bureau of Land Management for disposing of the water into the pit, under Title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency. Where surface disturbance is involved in transporting the produced water from the lease to the pit, e.g., building a road or laying a pipeline, a right-of-way authorization under title V of FLPMA and 43 CFR part 2800 from the Bureau of Land Management or a similar permit form the responsible surface management agency also shall be obtained by the operator of the pit or other responsible party.

b. On State and Privately-owned Lands. 1. When approval is requested for removing water that is produced from wells on leased Federal or Indian lands and that is to be injected into a well located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice (Form 3160–5), a copy of the Underground Injection Control permit issued for the injection well by the Environmental Protection Agency or the State where the State has achieved primacy, unless the well is authorized by rule under 40 CFR part 144. Submittal of the Underground Injection Control permit will be accepted by the authorized officer and approval will be granted for the removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety.

2. When approval is requested for removing water that is produced from well on leased Federal and/or Indian lands and is to be disposed of into a pit located on State or privately-owned lands, the operator shall submit to the authorized officer, in addition to a Sundry Notice, Form 3160–5, a copy of the permit issued for the pit by the State or any other regulatory agency, if required, for disposal in such pit. Submittal of the permit will be accepted by the authorized officer and approval will be granted for removal of the produced water unless the authorized officer states in writing that such approval will have adverse effects on the Federal/Indian lands or public health and safety. If such a permit is not issued by the State or other regulatory agency, the requested removal of the produced water from leased Federal or Indian lands will be denied if the pit on the State or privately-owned lands is not designed to meet the minimum Federal standards of this Order.

3. If the water produced from wells on leased Federal and/or Indian lands, and to be disposed of at a location on State or privately-owend lands, will be transported over off-lease Federal or Indian lands, the operator of the disposal facility or the responsible party shall have an authorization from the Bureau of Land Management under title V of FLPMA and 43 CFR part 2800, or a similar authorization from the responsible surface management agency in any instance where surface disturbance will be involved in transporting the produced water over off-lease Federal and/or Indian lands.

C. Informational Requirements for Injection Wells

The operator shall obtain, for an injection well proposed on Federal or Indian leases, an Underground Injection Control (UIC) permit pursuant to 43 CFR parts 144 and 146 from the Environmental Protection Agency or the State/Tribe where the State/Tribe has achieved primacy as listed in 43 CFR part 147. The operator shall also comply with the pertinent procedural and informational requirements for Application for Permit to Drill or Sundry Notice as set forth in Onshore Oil and Gas Order No. 1. The injection well shall be designed and drilled or conditioned in accordance with the requirements and standards described in Order No. 2 and pertinent NTLs, as well as the Underground Injection Control permit.

D. Informational requirements for Pits

Operators who request approval for disposal of produced water into a lined or unlined pit shall file an application of a Sundry Notice, Form 3160–5, and identify the operator's field representative by name, address and telephone number, and source of the produced water. Sources of produced water shall be identified by facility, lease number, well number and name, and legal description of well location. All samples for water analysis shall be taken at the discharge point. A reclamation plan detailing the procedures expected to be followed for closure of the pit and the contouring and revegetating the site should be included as appropriate. If requested by the authorized officer, a contingency plan to deal with specific anticipated emergency situations shall be submitted as provided for in 43 CFR 3162.5–1(d).

1. Lined Pits. The authorized officer shall not consider for approval an application for disposal into lined pits on Federal/Indian leases unless the operator also provides the following information:

a. A topographic map and drawings of the site on a suitable scale that show the pit demension, cross section, side slopes, leak detection system, and location relative to other site facilities.

b. The daily quanity of water to be disposed of (maximum daily quantity shall be cited if major fluctuations are anticiapted) and a water analysis (unless waived by the authorized officer as unnecessary) that includes the concentrations of chlorides, sulfates, pH, Total Dissovled Solids (TDS), and toxic constitutents that the authorized officer reasonably believes to be present.

c. Criteria used to determine the pit size which includes a minimum of 2 feet of free-board.

d. The average monthly evaporation and the average monthly preciptiation for the area.

e. The method and schedule for periodic disposal of precipitated solids, and a copy of the appropriate disposal permit, if any.

f. The type, thickness, and life span of material to be used for lining the pit and the method of installation. The manufacturer's guidebook and information for the product shall be included, if available.

2. Unlined Pits. a. Application for disposal into unlined pits may be considered for approval by the authorized officer where the application of the operator shows that such disposal meets one or more of the following criteria:

i. The water to be disposed of has an annual average TDS concentration equal to or less than that of the existing water to be protected, provided that the level of any toxic constituents in the produced water does not exceed established State or Federal standards for protection of surface and/or ground water.

ii. That all, or a substantial part, of the produced water is being used for beneficial purposes and meets minimum water quality standards for such uses. For example, produced water used for purposes such as irrigation and livestock or wildlife watering shall be considered as beneficial usage.

iii. That the water to be disposed of will not degrade the quality of surface or subsurface waters in the area, or the surface and subsurface waters contain TDS above 10,000 ppm, contain toxic constituents in high concentrations, or are otherwise of such poor quality or small quantity as to eliminate any practical use thereof.

iv. That the volume of water to be disposed of per disposal facility does not exceed an average of five barrels per day on a monthly basis.

b. Operators applying for disposal into an unlined pit shall also submit the following information, as appropriate:

i. Applications for disposal into unlined pits that meet any of the criteria in a., above, shall include:

(A) A topographic map and drawings of the site on a suitable scale that show the pit dimension, cross section, side slopes, size, and location relative to other site facilities.

(B) The daily quantity of water to be disposed of and a water analysis that includes Total Dissolved Solids (in ppm), pH, oil and grease content, the concentrations of chlorides and sulfates, and other parameters or constituents toxic to animal or plant life as reasonably prescribed by the authorized officer. The applicant should also indicate any effect or interaction of produced water with any water resources present at or near the surface and other known mineral deposits. For applications submitted under criterion a.iv., above, the water quality analysis is not needed unless requested by the authorized officer.

(C) The average monthly evaporation and the average monthly precipitation for the area. For application submitted under criterion a.iv., above, average annual data will be acceptable.

(D) The estimated percolation rate based on soil characteristics under and adjacent to the pit. In some cases the authorized officer may require certifiable percolation tests to be conducted.

(E) Estimated depth and areal extent of the shallowest aquifer with TDS less than 10,000 ppm, and the depth and extent of any known mineral deposits in the area.

ii. Where beneficial use (criterion a.ii., above) is the basis for the application, the justification submitted shall also contain written confirmation from the user(s).

iii. If the application is made on the basis that surface and subsurface waters will not be adversely affected by disposal in an unlined pit (criterion a.iii., above), the justification shall also include the following additional information:

(A) Map of the site showing the location of surface waters, water wells, and existing water disposal facilities within 2 miles of the proposed disposal facility.

(B) Average concentration of TDS (in ppm) of all surface and subsurface waters within the 2-mile radius that might be affected by the proposed disposal.

(C) Reasonable geologic and hydrologic evidence that shows the proposed disposal method will not adversely affect existing water quality or major uses of such waters, and identifies the presence of any impermeable barrier(s), as necessary.

(D) A copy of any State order or other authorization granted as a result of a public hearing that is pertinent to the authorized officer's consideration of the application.

3. *Temporary/Emergency Pits.* Application for a pit (lined or unlined) used for temporary/emergency purposes shall be submitted by the operator, on a Sunday Notice (Form 3160–5), for approval by the authorized officer, unless it has been approved in conjunction with a previously approved operational activity. Unless prohibited by the authorized officer, produced water from newly completed wells may be temporarily disposed of into reserve pits for a period up to 90 days, if the use of the pit was approved as a part of an application for permit to drill. Any extension of time beyond this period requires approval by the authorized officer.

Unlined pits may also be retained as temporary containment pits for use only in an emergency, provided such pits have been approved by the authorized officer. Any emergency use of such pits shall be reported in accordance with NTL–3A or subsequent replacement Order procedures, and the pit shall be emptied and the liquids disposed of in accordance with applicable State and/or Federal regulations within 48 hours following its use, unless such time is extended by the authorized officer.

E. Design Requirements for Pits

1. Pits shall be designed to meet the following requirements and minimum standards. For unlined pits approved under criterion D.2.a.iv., requirements d. and e. below do not apply.

a. As much as practical, the pit shall be located on level ground and away from established drainage patterns, including intermittent/ephemeral drainage ways, and unstable ground or depressions in the area.

b. The pit shall have adequate storage capacity for safe containment of all produced water even in those periods when evaporation rates are at a minimum. The design shall provide for a minimum of 2 feet of free-board.

c. Tht pit shall be fenced or enclosed to prevent access by livestock, wildlife, and unauthorized personnel. If necessary, the pit shall be equipped to deter entry by birds. Fences shall not be constructed on the levees. Figure 1 shows an example of an acceptable fence design.

d. The pit levees are to be constructed so that the inside grade of the levee is no steeper than 2:1. Levees shall have an outside grade no steeper than 3:1.

e. The top of the levees shall be level and at least 18 inches wide.

f. The pit location shall be reclaimed pursuant to the requirements and standards of the surface management agency. On a split estate (private surface, Federal mineral) a surface owner's release statement or form is acceptable.

2. Lined pits shall be designed to meet the following requirements and minimum standards in addition to those specified above:

a. The material used in lining pits shall be impervious. It shall be resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies, salt, fungi, or other substances likely to be contained in the produced water.

b. If rigid materials are used, leak-proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand expansion without cracking, contraction, and settling movements in the underlying earth. Semi-rigid liners such as compacted bentonite or clay may also be used provided that, considering the thickness of the lining material chosen and its degree of permeability, the liner is impervious for the expected period of use. Figure 2 shows examples of acceptable standards for concrete, asphalt, and bentonite/clay liners.

c. If flexible membrane materials are used, they shall have adequate resistance to tears or punctures. Figure 3 gives an example of acceptable standards for installation of the flexible membrane.

d. Lined pits shall have an underlying gravel-filled sump and lateral system or other suitable devices for the detection of leaks. Examples of the acceptable design of the leak detection system are shown in Figure 4 and Figure 5.

3. Failure to design the pit to meet the above requirements and minimum standards will result in disapproval of the proposal or a requirement that it be modified unless a request for variance is approved by the authorized officer.

F. Construction and Maintenance Requirements for Pits

Inspections will be conducted according to the following requirements and minimum standards during the construction and operation of the pit. Failure to meet the requirements and standards may result in issuance of an Incident of Noncompliance (INC) for the violation. The gravity of the violation, corrective actions, and the normal abatement period allowed and specified for each of the requirements/standards.

1. Any disposal method, whether existing prior to or after the effective date of this Order, that has not been approved, shall be considered an incident of noncompliance and may result in the issuance of a shut-in order or assessment of penalties pursuant to 43 CFR part 3163 until an acceptable disposal method is provided and approved by the authorized officer.

Violation: Minor: If it causes no significant environmental damages or effects.

Major: If it causes or threatens immediate, substantial and adverse impacts on public health and safety, the environment, production accountability, or royalty income.

Corrective action: Minor: Submit acceptable application.

Major: Shut-in, take corrective action to repair or replace damages according to instructions of authorized officer.

Abatement periods: Minor: 1 to 20 days or as directed by authorized officer.

Major: Within 10 days.

2. The operator shall notify the authorized officer to inspect the leak detection system at least 2 business days prior to the installation of the pit liner.

Violation: Minor.

Corrective action: Require verification of its installation.

Abatement periods: Prior to use of pit.

3. At least 2 business days prior to its use, the operator shall notify the authorized officer of completion of the pit construction, so that the authorized officer may verify that the pit has been constructed in accordance with the approved plan.

For failure to notify:

Violation: Minor.

Corrective action: Not applicable.

For failure to construct in accordance with the approved plan:

Violation: Minor if not in use; usually Minor if in use, unless Major as result of use.

Corrective action: The authorized officer may require corrections to comply with the plan or require amendment of the plan, but may shut-in operations if in use.

Abatement period: Prior to use of pit, if not already in use; 1 to 20 days depending on the degree of difficulty to correct, if the pit is in use.

4. Lined pit shall be maintained and operated to prevent unauthorized subsurface discharge of water.

Violation: Usually Minor, unless Major as result of discharge.

Corrective action: Repair/replace liner and possibly shut in operations.

Abatement period: 1 to 20 days depending on the onsite situation.

5. The pit shall be maintained as designed to prevent entrance of surface water by providing surface drainage.

Violation: Minor.

Corrective action: Provide surface drainage.

Abatement period: Within 20 days.

6. The pit shall be maintained and operated to prevent unauthorized surface discharge of water.

Violation: Usually Minor, unless discharge results in Major.

Corrective action: Clean up if spill occurs, and reduce the water level to maintain the 2 feet of free-board; shut-in operations, if required by authorized officer.

Abatement period: 1 to 20 days depending upon the onsite situation.

7. The outside walls of the pit levee shall be maintained as designed to minimize erosion.

Violation: Minor.

Corrective action: Necessary repair.

Abatement period: Within 20 days.

8. The pit shall be kept reasonably free from surface accumulation of liquid hydrocarbons that would retard evaporation.

Violation: Minor.

Corrective action: Clean up and may require skimmer pits, settling tanks, or other suitable equipment.

Abatement period: Within 20 days.

9. The operator shall inspect the leak detection system once a monith, or more often if required by the authorized officer in appropriate circumstances. The record of inspection shall describe the result of the inspection by date and shall be kept and made available to the authorized officer upon request.

Violation: Minor.

Corrective action: Commerce the required routine inspection and recordkeeping.

Abatement period: Within 30 days.

10. Prior to pit abandonment and reclamation, the operator shall submit a Sundry Notice for approval by the authorized officer, it not previously approved.

Violation: Minor.

Corrective action: Cease operations and file an application.

Abatement period: Within 10 days.

11. When change in the quantity and/or quality of the water disposed into an unlined pit causes the pit no longer to meet the unlined pit criteria listed under section D.2.a., the operator shall submit a Sundry Notice amending the pit design for approval by the authorized officer.

Violation: Minor unless the resulting damage is Major.

Corrective action: Submit the required amendment; shut-in operations if damage is determined by the authorized officer to be Major.

Abatement period: As specified by the authorized officer.

G. Other Disposal Methods

Other methods for disposal of produced water will be considered for approval by the authorized officer. This may include the use of existing commercial pits designed for the containment of produced water, tanks in lieu of pits, discharge to navigable water under a NPDES permit, or any other proposal meeting the objective of this Order that the authorized officer deems acceptable and that meets the requirements of State and Federal law and regulations.

H. Reporting Requirements for Disposal Facilities

All unauthorized discharges or spills from disposal facilities on Federal/Indian leases shall be reported to the authorized officer in accordance with the provisions of NTL–3A or subsequent replacement Order.

Violation: Minor unless resulting damage is major.

Corrective action: Submit the required report.

Abatement period: As specified by the authorized officer.

IV. Variances from Requirements or Minimum standards

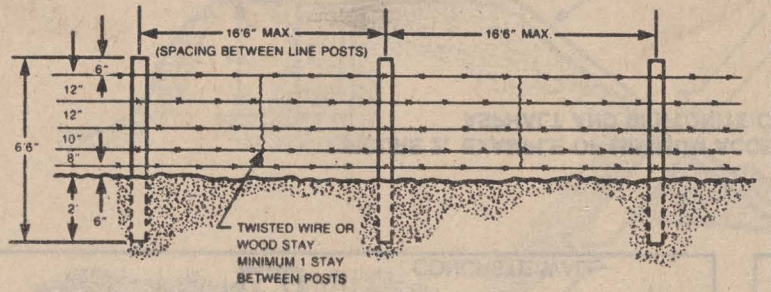
An operator may request that the authorized officer approve a variance from any of the requirements or minimum standards prescribed in Section III. of this Order. All such requests shall be submitted in writing to the appropriate authorized officer and provide information as to the circumstances that warrant approval of the variance(s) requested and the proposed alternative means by which the requirements or related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the proposed alternative(s) meet or exceed the objectives of the applicable minimum standard(s); or if the authorized officer determines that the exemption of the requirement is justified. Variances granted by BLM under this section shall be limited to proposals and requirements under BLM statutory and/or regulatory authority only, and shall not be construed as granting variances to regulations under EPA or State authority.

Attachments

Figure 1. Examples of Minimum Standards for Design and Construction of Fences and Corner Posts.
Figure 2. Example of Minimum Acceptable Standards for Concrete, Asphalt and Bentonite/Clay Liners.
Figure 3. Example of Minimum Acceptable Standards for Installation of a Flexible Liner.
Figure 4. Example of a Leak Detection System for a Lined Pit Constructed in Relatively Impermeable Soils.
Figure 5. Example of a Leak Detection System for a Lined Pit Constructed in Permeable Soils.

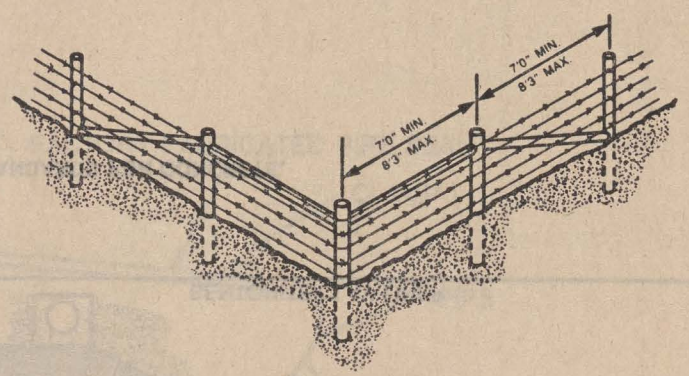
BILLING CODE 4310-84-M

FENCE CONSTRUCTION

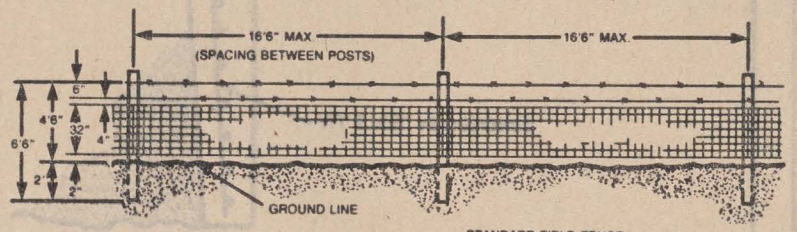


TYPICAL 5-WIRE BARB WIRE FENCE
using wood, pipe or steel "T" type posts

CORNER CONSTRUCTION
(applicable to barbed or net type wire)



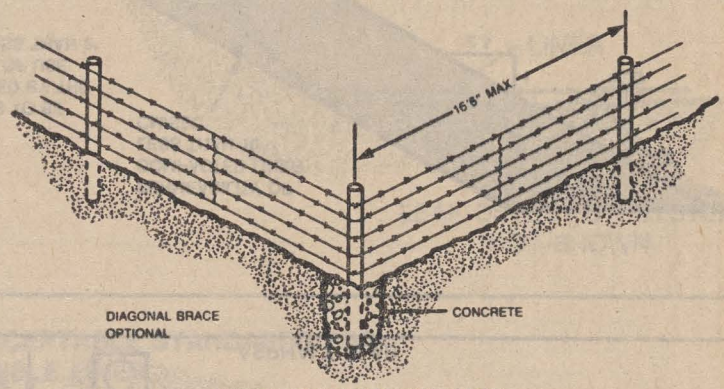
TYPICAL CORNER CONSTRUCTION
for buried corner posts



TYPICAL WOVEN WIRE FENCE WITH TWO
BARB WIRES
STAYS OPTIONAL

STANDARD FIELD FENCE:
8 LATERAL WIRES. VERTICAL STAY
WIRES SPACED AT 6". TOP AND BOTTOM
WIRES #10 GAUGE. INTERMEDIATE
AND STAY WIRES #12½ GAUGE

TYPICAL "STOCK TIGHT" FENCE
using wood, pipe or steel "T" type posts



TYPICAL CORNER CONSTRUCTION
for corner post set in concrete

FIGURE 1. EXAMPLES OF MINIMUM STANDARDS FOR DESIGN AND CONSTRUCTION OF FENCES AND CORNER POSTS.

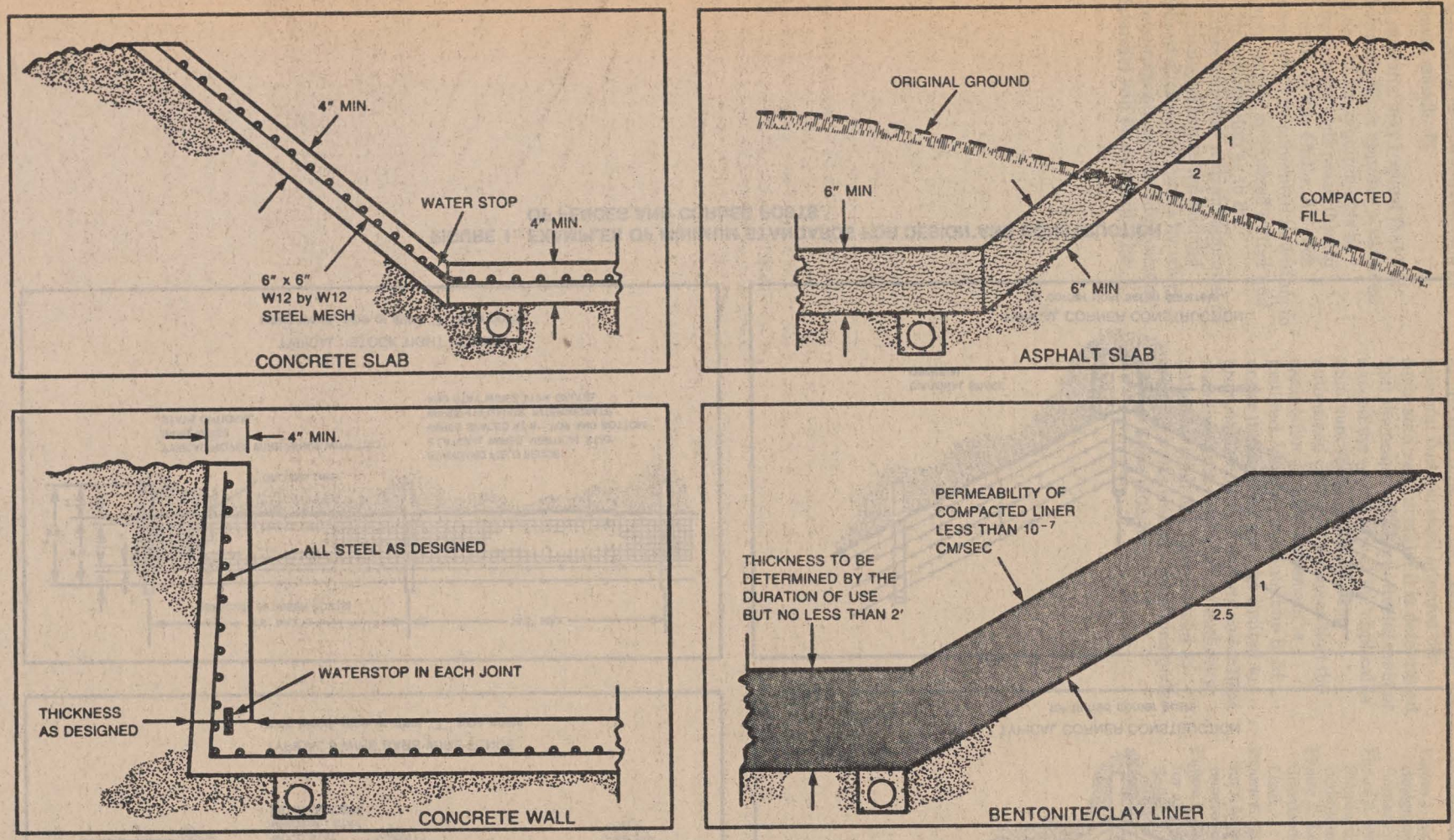


FIGURE 2. EXAMPLE OF MINIMUM ACCEPTABLE STANDARDS FOR CONCRETE, ASPHALT AND BENTONITE/CLAY LINERS.

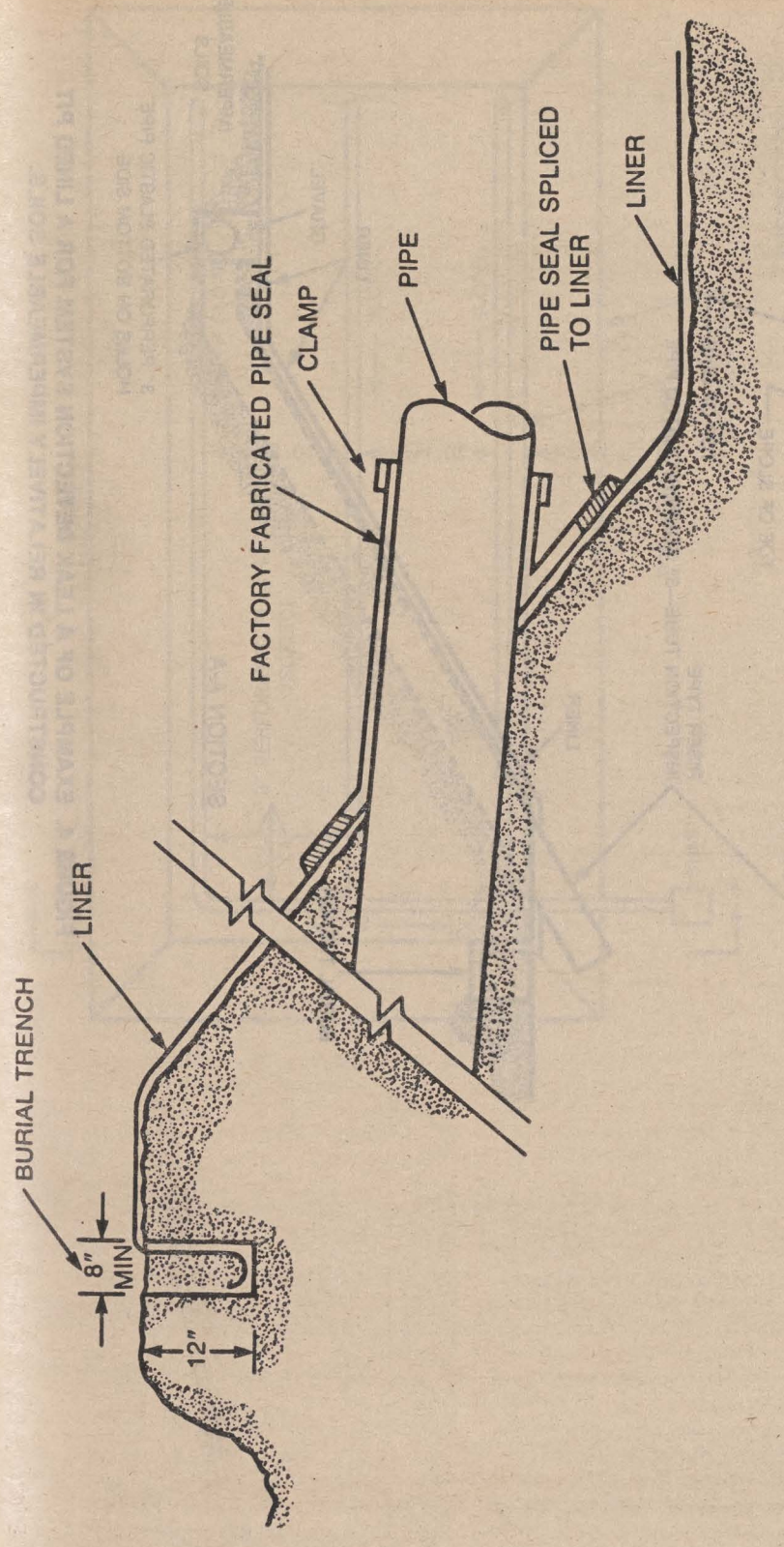


FIGURE 3. EXAMPLE OF MINIMUM ACCEPTABLE STANDARDS FOR INSTALLATION OF A FLEXIBLE LINER.

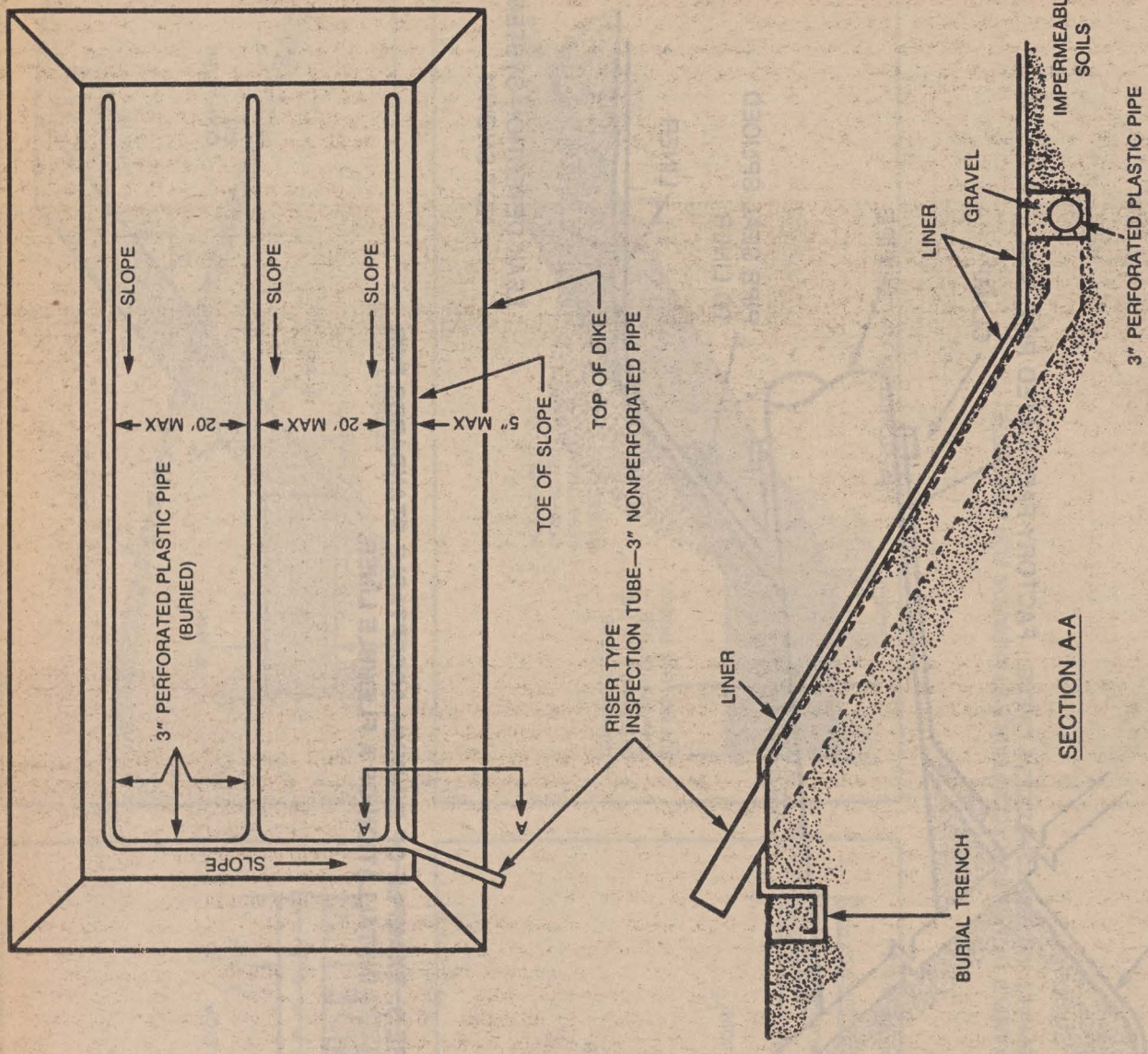
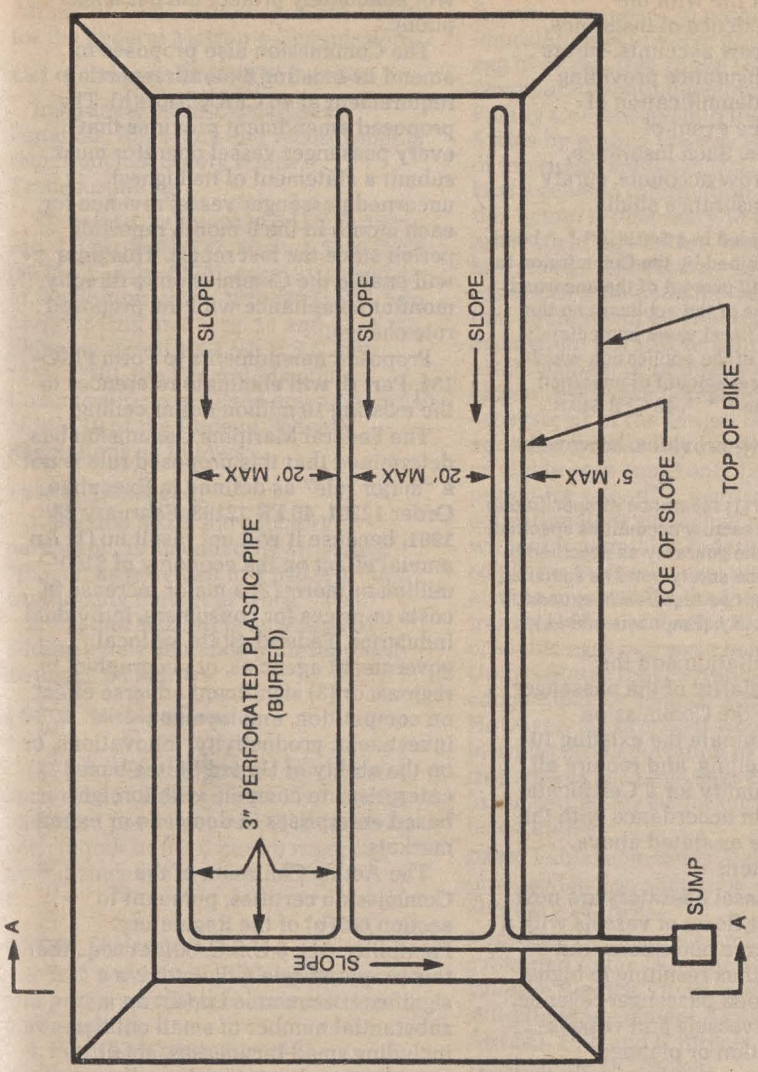


FIGURE 4. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN RELATIVELY IMPERMEABLE SOILS.



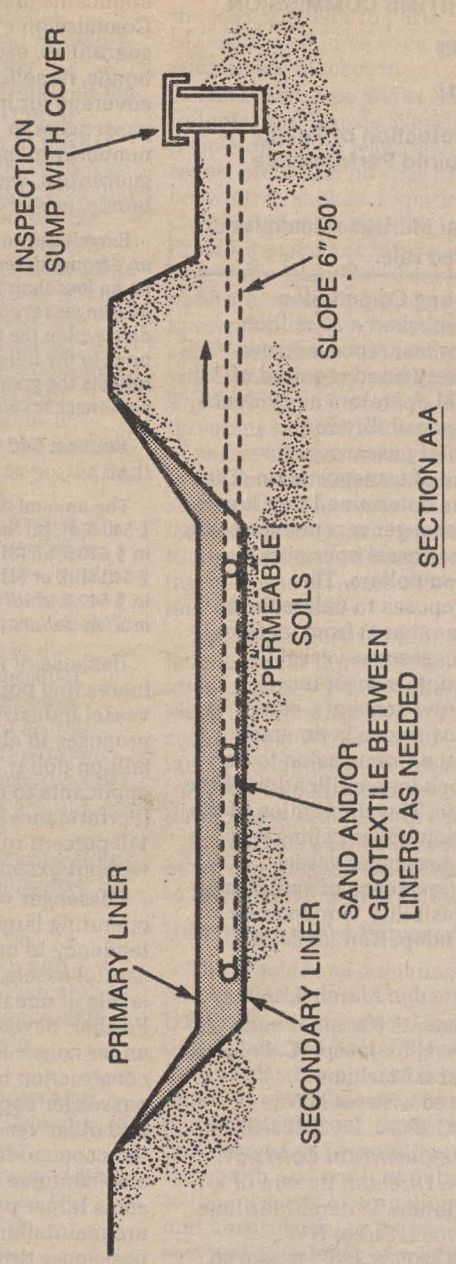


FIGURE 5. EXAMPLE OF A LEAK DETECTION SYSTEM FOR A LINED PIT CONSTRUCTED IN PERMEABLE SOILS.

[FR Doc. 90-1187 Filed 1-18-90; 8:45 am]
BILLING CODE 4310-84-C

FEDERAL MARITIME COMMISSION

46 CFR Part 540

[Docket No. 90-1]

Security for Protection of Public; Maximum Required Performance Amount

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: Existing Commission regulations established a 10 million dollar ceiling for insurance, escrow, guaranty, or surety bond required of passenger vessel operators as evidence of financial responsibility for indemnification of passengers for nonperformance of transportation. The Commission has determined that levels of unearned passenger revenue for some larger passenger vessel operators exceed 10 million dollars. The Commission proposes to delete the 10 million dollar maximum from its rules, and to require passenger vessel operators to maintain insurance, guaranties, escrow accounts, surety bonds, or self-insurance in an amount determined by the Commission to be adequate for such indemnification of the passenger public. The elimination of the existing 10 million dollar ceiling will ensure that all passenger vessel operators show evidence of sufficient financial responsibility to indemnify passengers for nonperformance of transportation.

DATE: Comments due March 5, 1990.

ADDRESS: Comments (Original and fifteen (15) copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing Public Law 89-777, 46 U.S.C. app. 817, are contained in part 540 of 46 CFR. They include requirements for certification of financial responsibility for passenger vessel operators for nonperformance of transportation.

Under the current rule, a passenger vessel operator must establish financial responsibility for indemnification of passengers for nonperformance of transportation, in order to obtain a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation ("Certificate (Performance)"). To show such financial responsibility, the applicants must file with the Commission evidence of insurance, guaranties, escrow accounts, surety bonds, or self-insurance providing coverage for indemnification of passengers in the event of nonperformance. Such insurance, guaranties, escrow accounts, surety bonds, or self-insurance shall:

> Except as provided in § 540.9(j) * * * be in an amount determined by the Commission to be no less than 110 percent of the unearned passenger revenue of the applicant on the date within the 2 fiscal years immediately prior to the filing of the application which reflects the greatest amount of unearned passenger revenue * * *. 46 CFR 540.5.

Section 540.9(j) provides, however, that:

> The amount of: (1) Insurance as specified in § 540.5(a), (2) the escrow account as specified in § 540.5(b), (3) the guaranty as specified in § 540.5(c), or (4) the surety bond as specified in § 540.6, *shall not be required to exceed 10 million dollars (U.S.).* (Emphasis added.)

Because of inflation and the increasing popularity of the passenger vessel industry the Commission proposes to eliminate the existing 10 million dollar ceiling, and require all applicants to qualify for a Certificate (Performance) in accordance with the 110 percent rule as stated above, without exception.

Passenger vessel operators are now operating larger fleets of vessels with a tendency to merge operations and capital assets, thus resulting in higher levels of unearned passenger revenue. Further, newer vessels and vessels under construction or planned construction have double or more the passenger capacity of earlier vessels, and older vessels are being refurbished to accommodate greater capacity. Fares also continue to increase. As a result, some larger passenger vessel operators are maintaining levels of unearned passenger revenue significantly above the current 10 million dollar maximum required performance amount prescribed under § 540.9(j). Since fares and passenger capacities continue to increase, and given the trend toward single operators maintaining larger fleets of vessels, this gap between the existing 10 million dollar maximum coverage now required of passenger vessel operators and actual unearned passenger vessel revenues of several larger passenger vessel operators can be expected to increase.

The Commission therefore proposes to delete § 540.9(j) and all references to the 10 million dollar ceiling in part 540 of 46 CFR. This change is intended to produce a required amount of coverage which will adequately protect the passenger public.

The Commission also proposes to amend its existing 6-month reporting requirement at 46 CFR § 540.9(h). The proposed amendment provides that every passenger vessel operator must submit a statement of its highest unearned passenger vessel revenue for each month in the 6-month reporting period since the last report. This data will enable the Commission to directly monitor compliance with the proposed rule change.

Proposed amendments to Form FMC-131, Part II, will eliminate references to the existing 10 million dollar ceiling.

The Federal Maritime Commision has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Acting Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this proposed rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h). Public reporting burden for the collection of information in this proposed rulemaking associated with § 540.4(c) (including filing requirements under § 540.5(a), (b), (c) and/or § 540.6) is estimated to average 3 hours per response; the burden associated with reporting self-insurance pursuant to § 540.5(d) is estimated to average 6 hours per response; the burden associated with § 540.9(h) is estimated to average 5 hours per response. These time 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. Comments on the information collection aspects of the rule should be submitted to the

Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Transportation.

Therefore, pursuant to 5 U.S.C. 553; sec. 3, Pub. L. 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e); secs. 21(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 820(a), 841a); and secs. 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1714, 1716), the Federal Maritime Commission proposes to amend part 540 of title 46 of the Code of Federal Regulations as follows:

§ 540.5 [Amended]

1. Section 540.5, introductory paragraph, is amended by removing, "Except as provided in § 540.9(j)," and capitalizing the initial word, "The."

2. Section 540.9(h) is amended by adding a new sentence after the third sentence as follows:

§ 540.9 Miscellaneous.

* * * * *

(h) * * * In addition, every person must submit a statement of its highest unearned passenger vessel revenue for each month in the 6-month reporting period since the last report. * * *

* * * * *

§ 540.9 [Amended]

3. In § 540.9, paragraph (j) is removed, and paragraph (k) is redesignated as paragraph (j).

4. Form FMC–131, Part II—Performance, introductory paragraph is amended by removing the second sentence. Paragraph No. 8 is also removed. Paragraphs No. 7 through No. 15 are redesignated as paragraphs No. 8 through No. 14.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1269 Filed 1–18–90; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN: 1018–AB33

Importation or Shipment of Injurious Wildlife: Brown Tree Snake

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to prohibit the importation of any live animal or viable egg of brown tree snake (*Boiga irregularis*) non-indigenous reptile of the Family Colubridae, into the United States by adding the species to the list of injurious reptiles in 50 CFR 16.15. The best available information indicates that this action is necessary to protect the interests of agriculture, human health and safety, and existing fish and wildlife resources from potential adverse effects that could result from purposeful or accidential introduction and subsequent establishment of naturally reproducing brown tree snake populations into ecosystems of the United States. If added to the list, live brown tree snakes or viable eggs could only be imported by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live brown tree snakes or viable eggs currently held in the United States for scientific, medical, educational, or zoological purposes. However, the proposal would prohibit interstate transportation of live brown tree snakes or viable eggs currently held in the United States for purposes not listed above.

DATE: Public comments addressing this proposed action should be submitted by February 20, 1990.

ADDRESS: Comments should be submitted to the Director, Fish and Wildlife Service, Division of Fish and Wildlife Management Assistance, 820 ARLSQ, 18th and C Streets NW., Washington DC, 20240.

FOR FURTHER INFORMATION CONTACT: John Bardwell, Deputy Chief, Division of Fish and Wildlife Management Assistance, 820 Arlington Square, 18th and C Streets NW., Washington, DC, 20240, telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposal is to prevent the accidental or intentional introduction of the brown tree snake and the possible subsequent establishment of self-sustaining populations.

Since introduced to Guam during World War II, brown tree snakes have become widely established. Studies by the Guam Division of Aquatic and Wildlife Resources and the Service have implicated the brown tree snake in the precipitous decline of birds on the island of Guam including the extirpation of 9 species within the past two decades. Snakes climbing power poles cause short circuits that frequently result in the loss of power to parts of the island of Guam, and have even caused islandwide blackouts.

The brown tree snake feeds on birds, rodents, and lizards. Nearly half of the people on Guam who raise chickens report predation on eggs and chicks by brown tree snakes. Experience on Guam clearly indicates that the introduction of brown tree snakes into new ecosystems, especially island environments with no naturally occurring snakes and no known natural predators, could pose a significant threat to the survival of wildlife resources, particularly birds. The loss of nectar and fruit eaters also threatens pollination and seed dispersal of native trees and other plants. Predation on native insectivorous birds and reptiles increases vulnerability of agriculture crops and native vegetation to insect pests and increases the risk of insect-borne diseases affecting humans and other animals.

The snake poses health, safety, and technological threats in Guam, where about 1 in every 1,000 emergency room visits is for treatment of brown tree snake bites. While considered only mildly venomous, the venom of brown tree snakes can cause serious, even life threatening, reactions in infants.

Brown tree snakes invade houses and other buildings on Guam and are known to bite infants in their cribs.

Description of the Proposed Rule

The regulations contained in 50 CFR part 16 implement the Lacey Act (18 U.S.C. 42) as amended. Under the terms of that law, the Secretary of the Interior is authorized to prescribe by regulation those non-indigenous wild animals or viable eggs thereof, that are deemed to be injurious or potentially injurious to the health and welfare of human beings, to the interests of agriculture, forestry, and horticulture, or the welfare of and survival of wildlife or wildlife resources of the United States. If determined the brown tree snake (*Boiga irregularis*) is injurious then as with all listed injurious animals, their acquisition, importation into, or transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States by any means whatsoever is prohibited except by permit for zoological, educational, medical, or scientific purpose, or by Federal agencies without a permit solely for their own use upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service Inspector at the port of entry. In

addition, no live brown tree snakes, progeny thereof, or viable eggs, acquired under permit may be sold, donated, loaned, or transferred to any other person or institution unless such person or institution has a permit issued by the Director of the Service. The interstate transportation of any live brown tree snakes currently held in the United States for any purpose not permitted would be prohibited.

Distribution

The brown tree snake is native to coastal Australia, Papua New Guinea, and a large number of islands in northwestern Melanesia. The species occurs on both large and small islands, extending from Sulawesi in eastern Indonesia through Papua New Guinea and the Solomon Island and into the wettest coastal areas of Northern australia (Kinghorn 1964; McCoy 1980; In Den Bosch 1985). Individuals of this species have been discovered on several extralimital islands, including Hawaii, but the snakes of Guam represent the only known established population outside the native range (Fritts 1987a).

Biology

The brown tree snake is known to feed on a broad variety of prey species in its native range. Prey in Australia and the Solomon Islands consist of lizards, small mammals, birds, and birds' eggs (Worrell 1963; Cogger 1975; McCoy 1980). The brown tree snake is commonly found in bird and poultry cages that it enters at night and, after swallowing birds or eggs, is unable to leave because of prominent lumps in the otherwise slender body (Worrell 1963; Cogger 1975). In Papua New Guinea the brown tree snake regularly takes eggs and chicks, but rats and mice are the preferred food (Parker 1983). Frogs (McCoy 1980; Parker 1983) and other snakes (Fritts and Scott 1985) are also occasionally eaten. Apparently, the small snakes depend primarily on lizards, small birds, and eggs of lizards and birds, whereas larger individuals feed to a greater extent on adult birds, mammals, and larger prey items (Savidge 1986; Greene, in litt.).

The reproductive characteristics of the brown tree snake are poorly known. The female of this species produces 4–12 oblong eggs (Zwinenberg 1978), perhaps in two or more clutches spaced at 3-week intervals. The eggs are 42–47 mm long and 18–22 mm wide (Parker 1983). They are covered with a leathery shell and often adhere together after the egg shell dries. Females abandon eggs in hollow logs, rock crevices, and sites where the eggs are protected from drying and high temperatures. Females may be capable of producting two clutches per year but the timing of reproduction may depend on seasonal variation in climate and prey abundance. Like females of other snake species, the femal brown tree snake may be able to store sperm and produce eggs over several years after a single mating. The brown tree snake is not restricted to trees or forested habitat. In Papua New Guinea it occupies a wide variety of habitats at elevation up to 1200 memters (Parker 1983). The brown tree snake is most commonly found in trees, caves, and near limestone cliffs, but frequently comes down to the ground to forage at night (Cogger 1975; McCoy 1980; Parker 1983). Based on frequent mention of this snake in relation to buildings, domestic poultry, and caged birds, the snake is probably common in human-disturbed habitats and second-growth forests.

Control

The task of preventing snakes from being carried from Guam to other Pacific Islands is a complex one involving several elements and a diversity of governmental agencies and private companies. The success of any effort to minimize the chance of further colonizations will involve active programs on Guam as well as on the islands judged most likely to receive the snake.

The degree of threat to any island will depend on the type of cargo and traffic from Guam, the frequency of such shipments, and the specific conditions at the point of disembarkation. Of the islands and island groups considered to be most at risk of receiving the brown tree snake from Guam are the State of Hawaii, Federated States of Micronesia (Pohnpei, Kosrae, Yap, and Truk), the Republic of Palau, and the Commonwealth of Northern Mariana Islands (Saipan, Tinian, and Rota). Areas at reduced risk are the Marshall Islands, American Samoa, and other Micronesian Islands (especially Nauru) with less frequent air and ship traffic from Guam.

The starting point for any program aimed at reducing the movements of snakes in ship and air traffic will be informing appropriate governmental agencies and the development of cooperation and communication between the diverse organizations involved in transportation, inspection, and distribution of cargo from off-island. Because most island residents will be unfamiliar with snakes, training of personnel in detecting snakes and responding to sightings will be needed. Educational materials will be needed to inform agency personnel and the general public. Increased awareness on Guam of the advantages to preventing the spread of the brown tree snake will contribute to the effort to detect, capture, and exclude snakes from export cargo and from the cargo dispatch areas.

Early detection of newly established populations is critical to any attempt to eradicate or control this snake. Recently arrived snakes will be in the immediate vicinity, whereas dispersal into more isolated habitats will occur as time passes. Active eradication efforts will be necessary to prevent colonization.

Need for Proposed Rule—Environmental Consequences

The Service believes this proposal is necessary based on currently available data that suggests importation of live brown tree snakes or viable eggs thereof, their release, and subsequent establishment of naturally reproducing populations in ecosystems of the United States could pose a real, or potential threat of undetermined extent to the interest of wildlife resources, agriculture, and human health and safety as follows:

1. Wildlife and biological communities—by destruction of species of native birds, mammals, and lizards; by disrupting vertebrate communities that control insects, disperse seeds, pollinate flowers, and serve as part of natural biological communities.

2. Agriculture—by killing and devouring chickens, pigeons, caged song birds, and bird eggs. The predation on agricultural animals and pets increases vulnerability of agricultural crops and native vegetation to insect pests. The loss of insectivorous birds and changes in the abundance of insectivorous lizards are likely to lead to an increase in insect abundance and make the invasion of insect pests from other islands and from outside Micronesia much more likely and increase the risk of insect-borne diseases affecting humans and other animals.

3. Human health and safety—by entering houses and commercial buildings. Snakes have been found biting and coiled around infants and small children in their beds. This species is technically a mildly venomous snake. While the degree of its toxicity is poorly known for adults, the venom of the brown tree snake can cause serious, even life threatening, reactions in infants. By causing electrical outages and related damages to equipment, the snakes produce additional threats to human safety. The sudden (even temporary) loss of street lights, traffic controls, hospital equipment, refrigeration systems, and computer networks can produce accidents

resulting in injuries, promote food spoilage, and hamper medical services. The trauma of discovering and being bitten by a snake inside residences and workplaces is significant for islanders not familiar with snakes, and also to many off-islanders. By startling drivers and pilots, and by physically interfering with the control of aircraft and automobiles, the snake causes additional infrequent threats to human safety.

Required Determinations

An assessment of the environmental impacts of this proposed rule has been prepared and an initial determination has been made that the proposal is not a major Federal action under the National Environmental Policy Act. It has also been determined that this proposal is not a major rule under Executive Order 12291. In addition, the best available information indicates that no live brown tree snakes or viable eggs thereof are known to be imported for the pet trade or for propagation or any other non-permittable activity and the proposed rule is not expected to have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act. Although the prohibitions imposed by the rule will not significantly affect the human environment in the United States, the importation and spread of the brown tree snake, without imposing these restrictions, could pose a potential adverse impact on agriculture, human health and safety, and wildlife resources.

The Environmental Assessment, the Determination of Effects of Rule, and all supporting documents are available for review during regular business hours of 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Service's Division of Fish and Wildlife Management Assistance, room 840, 4401 N. Fairfax Drive, Arlington, Virginia.

Information Collection Requirements

This proposed rule contains no information collection requirements which the Office of Management and Budget approval is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Author

The authors of this proposed rule are Clare Erekson, Special Assistant to the Assistant Director for Fish and Wildlife Enhancement, and Leslie D. Sweeney, Biologist, Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 16

Animal disease, Fish, Freight, Imports, Transportation, and Wildlife.

Accordingly, 50 CFR part 16 is proposed to be amended as described below:

PART 16—[AMENDED]

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

Authority: 18 U.S.C. 42; 74 Stat. 754.

2. Section 16.15 is revised to read as follows:

§ 16.15 Importation of live reptiles or their eggs.

(a) The importation, transportation, or acquisition is prohibited of any live specimen or egg of the brown tree snake (*Boiga irregularis*). Provided, that the Director shall issue permits authorizing the importation, transportation, and possession of such live snakes or viable eggs under the terms and conditions set forth in § 16.22.

(b) Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61, all other species of live reptiles or their eggs may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, educational, exhibitional or propagating purposes, but no such live reptiles or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

Dated: December 5, 1989.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–1292 Filed 1–18–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927–9273]

Northeast Multispecies Fishery

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

ACTION: Notice.

SUMMARY: NOAA issues this notice to inform the public and the fishing industry that the New England Fishery Management Council (Council) is considering Flexible Area Action System #2 under Amendment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The purpose of the action would be to protect a large amount of yellowtail flounder that are smaller than the equal minimum landing size but which currently are being caught and wastefully discarded at sea. The area affected is generally described as the Southern New England/Mid-Atlantic Closed Area.

DATES: Comments on the proposed action must be received by February 1, 1990.

ADDRESSES: Copies of the NMFS Northeast Regional Director's (Regional Director) fact-finding report and the Council's impact analysis will be available on January 24, 1990 upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960.

Send comments on the proposed action, the fact finding report and the Council's impact analysis to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

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

SUPPLEMENTARY INFORMATION: This action is taken under 50 CFR 651.26 as established by Amendment 3 to the FMP. Amendment 3 was approved by the Secretary of Commerce on November 24, 1989, and published on December 22, 1989 (54 FR 52803), with the regulations effective on December 19, 1989. Section 651.26 specifies a Flexible Area Action System (FAAS) whereby protection can be provided to concentrations of juvenile, sublegal, or spawning fish. As part of this process, the Regional Director will initiate a fact finding investigation of the alleged discard problem. The Council will also provide an impact analysis of alternative measures that might be implemented under this action.

Both the Regional Director's fact finding report and the Council's impact analysis on FAAS #2 will be available by January 24, 1990, at the Council Office (see addresses). The Council's Multispecies Committee (Committee) will hold a public hearing on February 1, 1990, at 1:30 p.m. at the Dutch Inn in Galilee, Rhode Island in conjunction with a meeting of the Committee to solicit comments on the proposed action. More specific information is below.

(1) The area of the proposed action, known as the Southern New England/

Mid-Atlantic Closed Area, is defined by a line drawn between the following points: (a) 40°33.5′ N. Latitude, 69°40′ W. Longitude; (b) 40°26.5′ N. Latitude, 70°40.5′ W. Longitude; (c) 40°40.5′ N Latitude, 70°40′ W. Longitude; (d) 40°30′ N. Latitude, 72°00′ W. Longitude; (e) 40°17.6′ N. Latitude, 72°00′ W. Longitude; (f) 40°15.5′ N. Latitude, 72°20′ W. Longitude; (g) 40°39′ N. Latitude, 72°20′ W. Longitude; (h) 40°42′ N. Latitude, 72°00′ W. Longitude; (i) 40°48.2′ N. Latitude, 72°00′ W. Longitude; (j) 41°00′ N. Latitude, 70°49.5′ W. Longitude; (k) 41°00′ N. Latitude, 70°30′ W. Longitude; (l) 40°50′ N. Latitude, 70°30′ W. Longitude; (m) 40°50′ N. Longitude, 69°40′ W. Longitude; and (a) 40°33.5′ N. Latitude, 69°40′ W. Longitude.

(2) The principal species that will be affected by any action will be yellowtail flounder, Atlantic sea scallops, Atlantic cod, summer flounder, winter flounder, and windowpane flounder. To a lesser extent, silver hake, *Loligo* squid and American lobster will be affected.

(3) The types of gear that could be affected by this action are all types of net gear capable of catching groundfish. These are otter trawls, mid-water trawls, gill nets, and scallop dredges.

(4) The fisheries that potentially will be impacted are the groundfish and Atlantic sea scallop fisheries that operate in the area of the proposed action and use the gear types listed above. Recreational fishing would not be affected by the proposed action.

(5) Based on 1988 landings data, the principal ports that will be affected are New Bedford, Point Judith, Montauk, and Newport. The expected duration of the action is 180 days. If implemented as early as February 6, 1990, the action could last until August 6, 1990.

(6) The Committee expects to recommend the following measures:

(a) An immediate implementation of a minimum 5 inch mesh size to apply to the codend (defined as 75 meshes from the terminum of the net) of trawl nets and to all mesh in gill nets within the boundaries of the Southern New England/Mid-Atlantic Closed Area as defined in paragraph (3) above. Vessels using smaller mesh may not keep any yellowtail aboard (stored the hold, on deck or in baskets);

(b) Closure of the entire area on March 1. Currently the part east of 71°30′ W. longitude closes on March 1 and the part west of 71°30′ W. longitude closes on April 1, 1990; and

(c) After the area opens under existing regulations, which is expected to be on June 1, 1990, the 5 inch mesh size would remain in effect as long as the Regional Director determines it is necessary, as a result of information received from the monitoring program or until 180 days after the action is implemented, whichever is earlier.

Other actions which might be considered are: (a) a minimum mesh size of 5½ inches instead of the 5 inch minimum; and (b) a complete area closure without minimum mesh sizes. Both alternatives would apply to the same area and for the same time period as the Committee's recommended alternative.

(7) The Council will begin analyzing the potential impacts of possible action upon publication of this notice.

(8) The Council's impact analysis will be available on January 24, 1990.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: January 12, 1990.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 90–1214 Filed 1–16–90; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 55, No. 13
Friday, January 19, 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

Date: January 12, 1989.

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 Public Law 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.

Revision

Farmers Home Administration

Application to Obtain Additional Funding

None.

On occasion.

State or local governments; Non-profit institutions; 130 responses; 520 hours; not applicable under 3504(h).

Jack Holston (202) 382–9736.

Agricultural Marketing Service

National Watermelon Promotion Board.

Not Applicable.

Recordkeeping; Monthly.

Farms; Businesses or other for-profit; 10,252 responses; 3,720 hours; not applicable under 3504(h).

Virginia M. Olson (202) 475–3930.

New Collection

Rural Electrification Administration

7 CFR part 1714 Electric Rates, Service and Contracts, Subpart F—Wholesale, Contracts for the Purchase and Sale of Electric Power and Energy.

None.

On occasion.

Business or other for-profit; Non-profit institutions; 165 responses; 990 hours; not applicable under 3504(h).

Laurence V. Bladen (202) 382–9558.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 90–1266 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

National Plant Genetic Resources Board Meeting

According to the Federal Advisory Committee Act of October 1972 (Pub. L. 92–463, 86 Stat. 770–776), the USDA, Science and Education, announces the following meeting:

Name: National Plant Genetic Resources Board

Date: February 20–21, 1990

Time: 8:30 a.m.—5 p.m., February 20; 8:30 a.m.—5 p.m., February 21

Place: Room 107–A, Williamsburg Room, Administration Building, Department of Agriculture, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permits.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related national and international programs; and discuss other initiatives of the Board.

Contact Person: H.L. Shands, Executive Secretary, National Plant Genetic Resources Board, U.S. Department of Agriculture, BARC-West, room 140, Building 005, Beltsville, Maryland 20705. Telephone: (301) 344–3311. Done at Beltsville, Maryland, this 4th day of January 1990.

Henry L. Shands,

Executive Secretary, National Plant Genetic Resources Board.

[FR Doc. 90–1213 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–03–M

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Change of Meeting Dates

SUMMARY: The Users Advisory Board meeting originally scheduled for February 12–15, 1990 in Washington, DC has been changed. The new dates are February 15–20, 1990 at the same address, the Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

CONTACT PERSON FOR AGENDA AND MORE INFORMATION: Marshall Tarkington, Executive Secretary, Users Advisory Board, Room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200, telephone (202)–447–3684.

Done in Washington, DC, this 10th day of January 1990.

John Patrick Jordan,

Administrator.

[FR Doc. 90–1267 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Exemption From Appeal; King Titus Fire Recovery Project Area

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: The Forest Service is exempting from appeals its decision to rehabilitate National Forest System Lands (NFSL) and sell salvageable timber on lands burned in the 1987 wildfires. The project area is located on the Klamath National Forest on lands bordered by Elk Creek, Ukonom Creek, the Klamath River and the Marble Mountain Wilderness.

During the severe fire season of 1987, extensive areas on the Klamath National Forest were burned and now need restoration. The proposed restoration consists of rehabilitation of NFSL damaged by wildfire and the recovery of dead and dying timber which is still merchantable. Any further delay in activities necessary to restore these damaged lands or remove this salvageable timber will result in unacceptable degradation of the physical and biological condition of NFSL and a further deterioration of the fire-damaged timber. Additional delays will also significantly increase the risk of severe forest insect and pest infestation of the already damaged as well as the intermingled and adjacent undamaged trees.

The Forest Supervisor has determined through an environmental analysis, which is documented in the Draft Environmental Impact Statement (DEIS), that there is good cause to expedite this project. The King-Titus Fire Recovery Project is necessary for the rehabilitation of the damaged NFSL and for the recovery of the dead and dying timber that resulted from the Kint-Titus wildfire in the summer and fall of 1987, in portions of the Klamath River, Elk Creek and Ukonom Creek drainages on the Klamath National Forest, California. The DEIS which documents the expected envirnomental effects of the action, also documents extensive public involvment and addresses issues raised by the public.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate effects of the program, the time remaining for program accomplishment has become critical. Any additional delays will result in damage to presently undamaged resources and could result in a complete loss of the salvageable resources as well.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision for the King-Titus Fire Recovery Project Final Environmental Impact Statement (FEIS). The decision to rehabilitate Klamath NFSL and offer salvage timber for sale in the King-Titus Fire Recovery Project Area will not be subject to administrative appeal and review pursuant to 36 CFR part 217.

EFFECTIVE DATE: This decision will be effective January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to the Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Carmine Lockwood, King-Titus Fire Recovery Project Coordinator, Happy Camp Ranger District, Klamath National Forest, P.O. Box 377, Happy Camp, CA 96039, (916) 493–2243.

ADDITIONAL INFORMATION: The catastrophic wildfires of 1987 burned an estimated 260,000 acres of NFSL on the Klamath National Forest. The King-Titus analysis area (approximatley 115,000 acres) encompasses four watersheds; Elk, Independence, King and Ukonom Creeks. The Klamath River forms the western limit while Fryingpan, Grider and Big Ridge define the eastern analysis area boundaries. The majority of this area was burned by the King-Titus, Cougar, or Gulch wildfires in 1987.

The King-Titus Fire Recovery Project Area lies entirely within the analysis area which consists of approximately 42,000 acres that are bordered by Elk Creek, Ukonom Creek, the Klamath River and the Marble Mountain Wilderness. Within this project area approximately 38,000 acres of NFSL were burned in varying intensities by the King-Titus Fire. Approximately 1,850 acres of the most severely burned areas in the King-Titus Fire Recovery Project Area are proposed for harvest. These lands need to be promptly rehabilitated and the timber removed that was killed or severely damaged by the wildfire.

Analyses of the rate of deterioration of the damaged timber and its related value indicates that about 738 thousand board feet, with an estimated value of $238,000, would be lost to insects and decay as a result of any further delays. Additional delays would also result in an estimated loss of $12,000 to Siskiyou County in National Forest Receipts. Furthermore, the reforestation of approximately 613 acres of severely and moderately burned acres would be delayed an additional year resulting in the loss of 331,000 seedlings, valued at $50,000 which are in the nursery and scheduled for planting on those acres.

On February 22, 1989, the Klamath National Forest Supervisor published a Notice of Intent to Prepare an Environmental Impact Statement for a proposal to implement fire recovery activities on a portion of the King-Titus Fire on the Happy Camp District. Scoping was conducted by the Klamath National Forest, pursuant to 40 CFR 1501.7, to determine the significant issues related to the King-Titus Fire Recovery Project proposal. These scoping sessions were held in Yreka and Happy Camp, California on February 25, 1989, and March 2, 1989, respectively. Additional meetings and field trips, both formal and informal, were held with interested publics. In compliance with the National Environmental Policy Act, the analysis for this proposal was documented in the King-Titus Recovery Project DEIS which was issued for public review on November 6, 1989. The Notice of Availability for the DEIS appeared in the **Federal Register** on November 17, 1989. Public comments will be received and addressed. The FEIS and Record of Decision are expected to be issued in March 1990. The associated planning records are located at the Happy Camp Ranger District, P.O. Box 377, Happy Camp, CA 96039.

Dated: January 5, 1990.

Lawrence Bembry,

Deputy Regional Forester.

[FR Doc. 90–714 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Flint Electric Membership Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact relating to the construction of the Houston County Service Center in Houston County, Georgia.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of the Houston County Service Center in Houston County, Georgia. Flint Electric Membership Corporation (Flint EMC) has requested REA's approval to construct the project.

FOR FURTHER INFORMATION CONTACT: Alex M. Cockey, Jr., Director, Southeast Area—Electric, room 0270, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8436.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Flint EMC develop a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from certain local and state agencies, has been adopted as REA's Environmental Assessment (EA) for the project in accordance with 7 CFR 1794.61. REA has concluded that the

BER represents an accurate assessment of the environmental impacts of the project. The project will allow Flint EMC to expand its office facilities to meet the needs of its service area.

The Houston County Service Center will consist of a 22,000 square foot (sq. ft.) office building (11,000 × two floors), a 20,520 sq. ft. shop/parking shed, a 19,300 sq. ft. warehouse, a 22,125 sq. ft. apparatus/storage building and 1,560 linear feet of 6 foot fence. The entire facility will require 15 acres of a 25 acre site.

REA has concluded that the proposed project will have no impact on wetlands, prime farmlands, floodplains, threatened or endangered species or critical habitat, property listed or eligible for listing in the National Register of Historic Places, or water quality.

Alternatives examined for the proposed project were no action and an alternative site. REA determined that there is a demonstrated need for the project and constructing it at the preferred site will have no significant impact to the environment.

REA has concluded that its approval to allow Flint EMC to construct the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has reached a FONSI with respect to its action related to the project.

Copies of the EA and FONSI can be obtained from REA at the address provided herein or at the office of Flint Electric Membership Corporation, P.O. Box 308, Reynolds, Georgia 31076–0308.

In accordance with REA Environmental Policies and Procedures, 7 CFR part 1794, Flint EMC published a notice and advertisement in The Daily Sun on November 21, 1989, and The Houston Home Journal on November 22, 1989. Both newspapers have a general circulation in Houston County, Georgia. The notice described the project, announced the availability of the BER and gave information where the BER could be obtained for review and where comments could be sent. The advertisement appeared in the same issues of the newspapers and briefly described the project and referred the reader to the legal notice. The public was given at least 30 days to respond to the notice. No responses to the notice were received by Flint EMC or REA.

Dated: January 12, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90–1265 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–15–M

Seminole Electric Cooperative, Inc.; Intent To Hold Scoping Meetings and Prepare Environmental Assessment and/or Impact Statement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an environmental assessment and/or environmental impact statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare a Draft Environmental Impact Statement (DEIS) and subsequently a Final Environmental Impact Statement (FEIS) for its Federal action related to a proposal by Seminole Electric Cooperative, Inc., (Seminole) of Tampa, Florida to construct a 230 kV transmission line project. REA may consider providing financing assistance, construction approval, and/or approval of contractual agreements between Seminole and other parties that would result in construction of the project. Notice is also given of public scoping meetings to be held in conjunction with the review of the possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250–1500, telephone number (202) 382–8436. For information on specific aspects of Seminole's proposal contact Mr. Mike Opalinski, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688–2000, telephone number (813) 963–0994.

SUPPLEMENTARY INFORMATION: Seminole tentatively proposes to construct approximately 70 miles of 230 kV transmission line. The line would begin at Seminole's Putnam County electric generating plant located near Palatka, Florida, and traverse in a westerly direction to Clay Electric Cooperative's Riverview and Florahome Substations located near Riverview and Florahome, Florida, respectively. The line would cross into Clay County and connect to Clay Electric Cooperative's Keystone Substation located near Keystone Heights, Florida. This section of the line would replace an existing 69 kV transmission line and remain on the same right-of-way. No additional right-of-way clearing would be required. From the Keystone Substation the line would traverse in a northerly direction to Clay Electric Cooperative's Black Creek Substation located north of Middleberg, Florida, and on to terminate at Jacksonville Electric Authority's Firestone Substation located in Jacksonville, Florida. The section of line between the Keystone and Firestone Substations would require new right-of-way.

Alternatives to be considered by REA and Seminole may include, among other options: (a) No action (b) upgrade 69 kV substransmission system (c) interconnect directly with Jacksonville Electric Authority (d) interconnect with Jackson Electric Authority to serve only the Black Creek Substation and (e) upgrade 69 kV subtransmissions system and construct a 230 kV interconnect between Jacksonville Electric Authority and the Black Creek Substation.

Public scoping meetings will be held at Clay Electric Cooperative, Highway 100 West, Keystone Heights, Florida, at 7 pm on Wednesday, February 21, 1990, and at the Civic Center, 2102 Palmetto Street, Middleberg, Florida, at 7 pm on Thursday, February 22, 1990.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meetings or in writing within 30 days after the February 22 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the scoping meetings may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, State of Florida, or local agencies may conduct.

To be presented at the meeting will be a Plan of Study which includes macro-corridor maps prepared by Seminole and Environmental Consulting & Technology, Inc., and an Alternative Evaluation prepared by Seminole. Both documents were reviewed by REA. The Plan of Study and Alternative Evaluation are available for public review at REA or Seminole at the addresses provided herein. They can

also be reviewed at the following libraries:

Putnam County Library System, 216 Reid Street, Palatka, Florida 32177, (904) 329–0126

Clay County Public Library, Orange Park Branch, 2054 Plainfield Avenue, Orange Park, Florida 32073, (904) 264–9764

Haydon Burns Main Library, 122 North Ocean Street, Jacksonville, Florida 32202, (904) 630–2665

Bradford County Public Library, 105 East Jackson Street, Starke, Florida 32091, (904) 964–6400

From information provided in the Plan of Study, the Alternative Evaluation, input from local, State of Florida and Federal agencies and the public, Seminole will prepare an Evaluation Analysis to be submitted to REA for review. Upon review of the Environmental Analysis and other input, REA at this point may determine to directly begin preparation of a DEIS. If significant effects are not evident based on a review of the Environmental Analysis and other relevant information, REA will prepare an environmental assessment to determine if the preparation of an Environmental Impact Statement (EIS) is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

And final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and REA environmental policies and procedures as applicable.

Dated: January 12, 1990.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 90–1212 Filed 1–18–90; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Economic Development Administration.

Title: Outlay Report and Request for Reimbursement for Construction Programs.

Form Number: Agency Form ED–113; OMB—0610–0076.

Type of Request: Extension of the expiration date.

Burden: 200 respondents; 1400 hours.

Average Hours per Response: 1.75 hours.

Needs And Uses: To summarize expenditures made and Federal funds unexpended for each award, report of status of Federal cash advanced and to request advances and reimbursements as outlined in the Common Rule (replaces OMB Circular A–102).

Affected Public: Grantees, state and local governments, nonprofit corporations and Indian Tribes.

Frequency: Four times a year.

Respondent's Obligation: Required for routine bookkeeping and accounting transactions.

OMB Desk Officer: Donald Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 12, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–1243 Filed 1–18–90; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of Export Administration

Fiber Optics Subcommittee Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Fiber Optics Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held February 7, 1990, 1:30 p.m., at the Herbert C. Hoover Building, room 1410, 14th Street & Constitution Avenue NW., Washington, DC. The Fiber Optics Subcommittee was formed to study fiber optic communications equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda:

General Session

1. Opening remarks by the Chairman.

2. Presentation of papers or comments by the public.

3. Future meeting dates.

Executive Session.

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the material be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TSS/OPTA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: January 11, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 90–1239 Filed 1–18–90; 8:45 am]

BILLING CODE 3510–DT–M

Radio Subcommittee Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Radio Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held February 7, 1990, 1:30 p.m., Herbert C. Hoover Building, room 1092, 14th Street & Constitution Ave., NW., Washington, DC. The Radio Subcommittee was formed to study radio equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Future meeting dates.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address:

Lee Ann Carpenter, TSS/OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Ave. NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: January 11, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 90–1240 Filed 1–18–90; 8:45 am]

BILLING CODE 3510-DT-M

BUREAU OF EXPORT ADMINISTRATION

Switching Subcommittee Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee will be held February 7, 1990, 1:30 p.m., Herbert C. Hoover Building, room 1617F, 14th Street & Constitution Avenue NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda:

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of methods to simplify ECCN 1567A.
4. Future meeting dates.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TSS/OTPA/BXA, 4069A, U.S. Department of Commerce, 14th & Constitution Avenue NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC, 20230. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: January 11, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 90–1241 Filed 1–18–90; 8:45 am]

BILLING CODE 3510-DT-M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held February 7, 1990, 9:30 a.m., room 1617–F, at the Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

Agenda:

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of proposed simplified telecommunications controls.

4. New business.

5. Future meeting dates.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that the materials be forwarded two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TSS/OTPA/BXA, Room 4069A, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in sections 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377–2583.

Dated: January 11, 1990.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 90–1242 Filed 1–18–90; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Douglas J. Aller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether the Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1223H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 88–2A017."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 87–00017, which was issued on May 26, 1989 (54 FR 24932, June 12, 1989).

Summary of the Application

Applicant: Construction Industry Manufacturers Association ("CIMA"), 111 East Wisconsin Avenue, Suite 940, Milwaukee, Wisconsin 53202.

Contact: J. William Peterson, Director of Government Affairs.

Telephone: 202/479–2666.

Application No.: 88–2A017.

Date Deemed Submitted: January 8, 1990.

Request For Amended "Members": CIMA seeks to amend its Certificate to add the following company as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): General Engines Co., Inc., Thorofare, New Jersey.

Dated: January 12, 1990.

Douglas J. Aller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90–1244 Filed 1–18–90; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Application for Marine Mammals Permit; Southwest Fisheries Center, NMFS (P77#37)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–222).

1. Applicant: Southwest Fisheries Center, NMFS, P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research.

3. Name of Marine Mammals:

California sea lion (*Zalophus californianus*)
Harbor seal (*Phoca vituline*)
Northern elephant seal (*Mirounga angustirostris*)
Harbor porpoise (*Phocoena phocoena*)
Bottlenose dolphine (*Tursiops sp.*)
Common dolphin (*Delphinus delphis*)
Pacific white-sided dolphin (*Lagenorhynchus obliguidens*)
Northern right whale dolphin (*Lissodelphis borealis*)
Risso's dolphin (*Grampus griseus*)
Short-finned pilot whale (*Globicephala macrorhynchus*)
Gray whale (*Eschrichtius robustus*)
Unspecified marine mammals

4. Type of take: The collection an unspecified number of cetaceans and pinnipeds taken incidentally to U.S. commercial fishing operations.

5. Location of Activity: California.

6. Periods of Activity: 5 years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731 (213/514–6196).

Dated: January 12, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90–1209 Filed 1–18–90; 8:45 am]

BILLING CODE 3510–22–M

[Modification No. 1 to Permit No. 663]

Marine Mammals Permit Modification; Dr. Bernd Wursig and Mr. Salvadore Cerchio (P36B)

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 220.24 of the regulations governing endangered species (50 CFR parts 217–222), Scientific Research No. 663 issued to Dr. Bernd Wursig and Mr. Salvadore Cerchio, Moss Landing Marine Laboratories, P.O. Box 450, Moss Landing, California 95039, on February 21, 1989, is hereby modified in the following manner:

Section A is deleted and replaced by:

1. Up to 250 humpback whales (*Megaptera novaeangliae*) may be taken annually by inadvertent harassment during photographic studies of recorded singers.

2. All attempts to conduct photographic activities at distances less than 300 feet (as outlined in § 222.31 "Approaching Humpback Whales in Hawaii") will be counted as a take against the authorized number.

Special Conditions:

Sections B.1, B.3, B.5 and B.7 are deleted and replaced by:

1. The animals authorized herein shall be taken from the area, for the means, and for the purposes described in the application and modification request of October 30, 1989.

3. The Permit Holder shall notify the Protected Species Coordinator, Pacific Area Office, Southwest Region, 2570 Dole Street, Honolulu, HI 96822 (tel. 808/955–8831) at least two weeks in advance with an itinerary of your activities. This notification should include names, numbers, and qualifications of persons accompanying the research. The Protected Species Coordinator has final determination on the dates and specific locations of the permitted activities and he retains the right to place observers on the research vessels to monitor the effects of authorized activities on the animals.

5. The Holder shall submit a report by December 31 of each year the permit is valid describing the activities that have been conducted under Permit. The report should include when, where, how and how many groups of whales were approached; how individuals and groups of whales responded to the approach; whether and how response varied by time, location, nature of approach, etc.; actual distances from the animals required to obtain clear observations and photographs; total number of fluke shots taken; any incidents of harassment; measures taken to minimize disturbance and the apparent effectiveness thereof; and an evaluation of and summary of the results of the research as it relates to the research objectives.

5.a. The above required annual report should also include when, where, and what activities are planned to be conducted during the forthcoming year; what steps have been and will be taken to coordinate with other researchers so as to minimize disturbance and avoid possible duplicative research; and what steps will be taken to avoid or minimize disturbance from proposed activities. Authorization to continue the described research in the second and subsequent years is deferred pending submission and approval of a report on each preceding year's activities and specific research proposed for the forthcoming year.

7. This Permit is valid with respect to the taking authorized herein until December 31, 1993.

Issuance of this Permit and modification, as required by the Endangered Species Act of 1973, is based on the finding that such Permit as modified: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject to the Permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Act. This Permit as modified was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and modification is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, Maryland 20910;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Protected Species Coordinator, Pacific Area Office, Southwest Region, 2570 Dole Street, Honolulu, Hawaii 96822.

Dated: November 11, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90–1210 Filed 1–18–90; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 20, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFROMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION:

On September 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 40160) of proposed addition to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments were received from the current contractor prior to the issuance of the notice of proposed addition of this service to the Procurement List and during the comment period from the

Local and National Union representing the contractor's employees. The current contractor indicated that the addition of this service and another janitorial service also under consideration by the Committee would be devastating to his firm from a dollar volume and number of contracts standpoint. The Union commenters expressed concern that the employees who may be displaced if this service is added to the Procurement List would be unable to obtain other employment at comparable wages and benefits.

The Committee recognizes that some impacts of this nature are a necessary consequence of its operations, and carefully considers the overall impact of each of its actions. The Committee has determined that the addition of this service to the JWOD program would not have a severe adverse impact on the current contractor. The proposal to add the other building to the Procurement List has not been transmitted to the Committee for consideration. If that proposal is presented to the Committee in the future and the current contractor is still providing the service, the impact on the contractor is still providing the service, the impact on the contractor would be considered at that time. This would include consideration of the cumulative impact of this addition and the proposed additional action.

The Committee also considered concerns expressed in the comments about the loss of employment an the possible inability of the displaced employees to obtain other employment at comparable wages and benefits in arriving at its decision to add this service to the Procurement List. The Committee has determined that the employment gains for persons with profound disabilities who have difficulty in finding a job at any wage, outweigh the possible loss of employment by persons who do not have severe disabilities.

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the service at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1990: Janitorial/Custodial, John F. Kennedy Federal Building—High Rise, Boston, Massachusetts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90–1293 Filed 1–18–90; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: February 20, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On November 27, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 48789) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning the capability of a qualified workshop to provide the services at a fair market price and the impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1990:

Cutting and Assembly of FTESFB System for C–130, Robins Air Force Base, Georgia.

Janitorial/Custodial, Air National Guard, Portland, Air National Guard Base, Portland, Oregon.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90–1294 Filed 1–18–90; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1990; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1990 a service to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before February 20, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following service to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540): Janitorial/Custodial, Idaho Department of Energy Building, 705 DOE Place, Idaho Falls, Idaho.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90–1295 Filed 1–18–90; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Special Operations Policy Advisory Croup

ACTION: Renewal of the Special Operations Policy Advisory Group.

SUMMARY: Under the provisions of Public Law 92–463, "Federal Advisory Committee Act," notice is hereby given that the Special Operations Policy Advisory Group (SOPAG) has been determined to be necessary and in the public interest, and has been renewed, effective January 8, 1990.

The SOPAG provides the Secretary of Defense with timely advice on critical national policy issues, focusing on special operations. These special operations are generally characterized as high risk activities that require oversight at the national level. The SOPAG constitutes a standing cadre of top level experts capable of rendering sound advice to senior Department of Defense leadership on sensitive issues in special operations.

The SOPAG will continue to be composed of a well-balanced membership from both industry, academia and government, with recognized experts in special operations and related areas of concern to the Department of Defense.

Dated: January 9, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–1218 Filed 1–18–90; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent (NOI) to Prepare an Environmental Impact Statement for the Construction and Operation of the Over-the-Horizon Backscatter Central Radar System

The United States Air Force plans to prepare an Environmental Impact Statement (EIS) for the construction and operation of an Over-the-Horizon Backscatter (OTH-B) Radar System—Central Radar System, near Amherst, SD and Thief River Falls, MN in accordance with the National Environmental Policy Act (NEPA) of 1969, 40 CFR part 1500 and Air Force Regulation 19–2.

The OTH-B radar is a surveillance and tracking system that the U.S. Air Force plans to construct and operate in four locations in the United States. The functions of these radar systems are to detect, track, and give early warning of aircraft approaching North America. The East Coast Radar System has been constructed in Maine, and the West Coast system is under construction in California and Oregon. The Alaskan Radar System is currently being planned for construction in 1990. The Central Radar System would be the fourth system.

The radar system will detect aircraft in a surveillance area from 500 to 1,800 nautical miles from the radar. The antenna arrays for the Central Radar System would face east, southeast, southwest, and west and will provide coverage to the south and to the near-shore areas on the eastern and western coasts of the United States which are not covered by the coastal OTH-B systems. The radar operates by refracting high frequency radio waves off the ionosphere to targets over the horizon. The reflected signal from the target returns over the same path.

In May 1987 the Air Force completed an Environmental Impact Statement (EIS) which considered nine alternative study areas for the location of an OTH-B-Central Radar System. The EIS evaluated the operational and environmental consequences of placing the system in each of the nine study areas. In September 1988, the Air Force issued a Record of Decision which narrowed the study areas to two: One area near Amherst, SD for the transmit site; a second area near Thief River Falls for the receiver site.

The Air Force is today announcing its intent to prepare a site specific Environmental Impact Statement to evaluate potential environmental impacts from the construction and operation of an OTH-B Central Radar System at sites within the previously selected Amherst and Thief River Falls study areas. Two alternative sites are being considered in each of the two study areas. The Air Force proposes selection of one site for the transmit location near Amherst, SD and one site for the receiver location near Thief River Falls, MN. This EIS will assess the environmental impacts of the construction and operation of the OTH-B Central Radar System at specific sites in the study areas.

The proposed action for the Central Radar System includes construction and operation of eight antenna sectors; four for the transmit site (in South Dakota) and four for the receiver site (in Minnesota). The proposed action also includes the construction and operation of an Operations Center at Grand Forks Air Force Base, ND.

At the transmit site in South Dakota, each of the four sectors will be generally comprised of an antenna array and groundscreen, two sounder antennas, an exclusion area, an electronics building, an exclusion fence, and a perimeter security road. Each transmit antenna will be approximately 4,200 feet long (including one sounder antenna). The transmit towers and backscreen will vary in height from 35 feet to 135 feet. The sounder antennas will consist of two, 150 foot high vertical truss towers with radiating elements spanning to a third 50 foot high monopole placed approximately 320 feet in front of the two towers. A groundscreen will extend 750 feet in front of each antenna array and an exclusion area will extend about 3,250 feet beyond the groundscreen. An electronics building will be located behind each antenna array. All components will be enclosed by a security fence which is bounded by the perimeter road.

At the receive site in Minnesota, each of the four sectors will generally be comprised of an antenna array and groundscreen, an electronics building, an exclusion fence, and a perimeter security road. Each receive antenna array will be approximately 5,000 feet long and 65 feet high. A groundscreen will extend 750 feet in front of each antenna array. An exclusion fence and perimeter road will surround all components.

Public scoping meetings for the site specific EIS will be held in Warren, MN on February 5, 1990 and in Britton, SD on February 6, 1990. Local communities and the public will be notified of scoping meeting times and locations through the local media.

The purpose of each public scoping meeting is to solicit comments on the environmental impacts to be addressed in the proposed site specific environmental impact statement. Impacts to be addressed in the EIS include, but are not necessarily limited to, socioeconomics, geology and soils, water quality, hydrology, aquatics, vegetation, wetlands, wildlife, threatened and endangered species, air quality, noise, and electromagnetic environment. These concerns were identified during the scoping meetings held in 1987 for the initial OTH-B-Central Radar System and through ongoing consultation with various environmental agencies.

Persons requiring further information on the proposed action and EIS or planning to submit written comments and suggestions concerning the scope of the environmental analysis should contact: Major Ronald L. Goodner, TCO-

5, Electronics Systems Division, Hanscom AFB, MA 01731–5000.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–1261 Filed 1–18–90; 8:45 am]

BILLING CODE 3910–01–M

Air Force Institute of Technology Board of Visitors; A Subcommittee of the Air University Board of Visitors; Meeting

The Air Force Insitute of Technology Board of Vistors, a Subcommittee of the Air University Board of Visitors, will hold an open meeting at 9 a.m. on 1 March 1990, in the Commandant's Conference Room (ten seats available), Building 125, Wright-Patterson Air Force Base, Ohio.

The purpose of the meeting is to give the board the opportunity to present to the Commandant, Air Force Institute of Technology, a report of findings and recommendations concerning the Institute's educational programs. The findings of the subcommittee will also be reported to the Commander, Air University, at the next regularly scheduled meeting of the Air University Board of Visitors.

For further information on this meeting, contact Lt. Col. Richard Nissing, Deputy Director, Operations and Plans, Directorate of Operations and Plans, Air Force Institute of Technology, (513) 255–5402 or 4219.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90–1262 Filed 1–18–90; 8:45 am]

BILLING CODE 3910–01–M

Air University Board of Visitors

Dated: 5 February 1990.

The Air University Board of Visitors will hold an open meeting on 9–10 April 1990 beginning at 0830 in the Air University Conference Room, Air University Headquarters, Maxwell Air Force Base, Alabama (10 seats available).

The purpose of the meeting is to give the board an opportunity to review Air University education programs and to present to the Commander, Air University, a report of their findings and recommendations concerning these programs.

For further information on this meeting, contact Dr. Dorothy D. Reed, Coordinator, Air University Board of Visitors, Headquarters, Air University, Maxwell Air Force Base, Alabama 36112–5001, telephone (205) 293–5159.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 90–1263 Filed 1–18–90; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC90–10–000, et al.]

Northeast Utilities Service Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take note that the following filings have been made with the Commission:

1. Northeast Utilities Service Company (Re Public Service Company of New Hampshire)

[Docket Nos. EC90–10–000, ER90–143–000, ER90–144–000, ER90–145–000, and EL90–9–000]

January 8, 1990.

Take notice that on January 8, 1990, Northeast Utilities Service Company (NUSCO) filed an application seeking the approval required from the Commission, as well as three rate schedule filings and a petition for declaratory order, to resolve the bankruptcy reorganization proceeding of Public Service Company of New Hampshire (PSNH), pursuant to the plan of NUSCO's parent company, Northeast Utilities (NU).

In order to implement and accomplish the actions by the Commission required in conjunction with the bankruptcy reorganization of PSNH, NUSCO has filed:

1. Pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, and part 33 of the Commission's Regulations, 18 CFR 33.1 *et seq.*, an application by NUSCO seeking Commission approval and authorization for the disposition to NU of PSNH's facilities subject to Commission jurisdiction (Docket No. EC90–10–000).

2. Pursuant to section 205 of the EPA, 16 U.S.C 824d, and § 35.13 of the Commission's Regulations, 18 CFR 35.13, a rate schedule filing for the Sharing Agreement (Docket No. ER90–143–000).

3. Pursuant to section 205 of the FPA and § 35.12 of the Commission's Regulations, 18 CFR 35.12, a rate schedule filing for the Seabrook Power Contract (Docket No. ER90–144–000).

4. Pursuant to section 205 of the FPA and § 35.13 of the Commission's Regulations, a filing of two rate schedules for the Capacity Interchange Agreements between the present NU system and PSNH (Docket No. ER90–145–000).

5. Pursuant to Rule 207(b) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(b), or alternatively, sections 203 and 205 of the FPA, a "Petition of Northest Utilities Service Company for Declaratory Order Disclaiming Jurisdiction, or Alternatively, Application for Approval of Transitional Management Provisions." (Docket No. EL90–9–000).

Asserting that each of the requested Commission actions on the application/rate filings/petition is interdependent and each is an intergral part of the total resolution of the PSNH bankruptcy, NUSCO has requested consolidation of the application, rate filings and petition.

In addition, NUSCO requests expedited treatment of its application and rate filings. NUSCO requests a final decision by the Commission on these matters by July 27, 1990. NUSCO also requests final Commission action on the petition (or alternative applications) by April 4, 1990.

For the three rate filings referred to above, NUSCO has requested an effective date of July 27, 1990, in order for NU to acquire PSNH on or before August 1, 1990 (the effective date actually requested for the Capacity Interchange Agreements is the consummation of the reorganization, which is expected to be July 27, 1990). Consistent with that request, NUSCO has requested waiver of the 120–day notice and posting limitation in § 35.3(a) of the Commission's Regulations.

Comment date: January 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Decker Energy International, Inc.

[Docket No. QF87–277–001]

January 10, 1990.

On December 28, 1989, Decker Energy International, Inc. (Applicant), of 400 North New York Avenue, Suite 101, Winter Park, Florida 32789, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Crawford County, Michigan. The facility will consist of a stoker-type boiler and a steam turbine/generator. The net electric power production facility will be 28,170 kilowatts. The primary energy source will be biomass in the form of wood and wood waste. Oil or natural gas will be

used for start-ups, however, such fossil fule usage will not exceed 1% of the total energy input to the facility during any calendar year period. Installation of the facility is expected to begin about June 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Koma Kulshan Associates

[Docket No. QF89-326-001]

January 10, 1990.

On December 28, 1989, Koma Kulshan Associates (Applicant), c/o Pacific Energy, 6055 E. Washington Blvd., Suite 608, Commerce, California 90040, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 12 MW hydroelectric facility (FERC P. 3239) will be located on Rocky, Sulphur and Sandy Creeks in Watcom County, Washington.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Doswell Limited Partnership

[Docket No. ER90-80-000]

January 11, 1990.

Take notice that Doswell Limited Partnership tendered for filing on January 5, 1990 revised copies of its Power Purchase Agreements in this docket.

Comment date: January 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Cogen Technologies Linden Venture, L.P.

[Docket No. QF90-65-000]

January 12, 1990.

On January 3, 1990, Cogen Technologies Linden Venture, L.P. (Applicant), of 1600 Smith Street, Suite 5000, Houston, Texas 77002, 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 Linden, New Jersey, at the site of the Exxon Bayway petrochemical and refining complex. The facility will consist of five combustion turbine generators, five supplementary fired waste heat recovery steam generators, and three admission/extraction steam turbine generators. Thermal energy recovered from the facility will be used by Exxon in its petrochemical and refining complex. The primary energy source of the facility will be natural gas. The maximum net electric power production capacity of the facility will be 614 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

6. Toledo Edison Company

[Docket No. ER90-146-000]

January 12, 1990.

Take notice that on January 8, 1990, the Toledo Edison Company (Toledo) tendered for filing a Supplemental Resale Service Rate Agreement dated as of December 1, 1989 between Toledo and American Municipal Power-Ohio, Inc. (AMP-Ohio) (Supplemental Agreement). Toledo states that the Supplemental Agreement will permit sales of electricity by Toledo to AMP-Ohio in excess of the minimum amounts required under the Municipal Resale Service Rate Agreement between Toledo and AMP-Ohio (Toledo Edison Rate Schedule FERC No. 31) at negotiated rates which are lower than those specified in the Municipal Resale Service Rate Agreement.

Toledo has requested waiver of the Commission's regulations in order to permit the Supplemental Agreement to become effective on January 1, 1989.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER90-14-000]

January 12, 1990.

Take notice that on January 5, 1990, Consolidated Edison Company of New York, Inc. (Con Edison) tendered an amendment of its December 19, 1989 filing. This amendment provides additional information regarding cost support and escalation of charges for the sale of firm winter capacity and energy to Power Authority of the State of New York (the Authority) for resale to Hydro-Quebec.

Con Edison states that a copy of this amended filing has been served by mail upon the Authority.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service

[Docket No. ER89-651-000]

January 12, 1990.

Take notice that Southwestern Public Service Company (Southwestern) on January 5, 1990, tendered for filing a supplemental filing to change Valley Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc. of New Mexico, Lea County Electric Cooperative, Inc., and Roosevelt County Electric Cooperative, Inc.

The supplemental filing was made to: (1) Clarify certain provisions of the new rate schedules: (2) Change the administrative charge of $.001 per kWh found on Exhibit D to $.0003 per kWh; and (3) include a credit of $.00016 per kWh due to variable O&M cost reductions.

Copies of the supplemental filing were served upon the four customers and the New Mexico Public Service Commission.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Montana Power Company

[Docket No. ER90-89-000]

January 12, 1990.

Take notice that on January 5, 1990, the Montana Power Company tendered for filing as a supplement to its earlier filing in this docket a further explanation of Exhibit C.1 to Schedule C of the earlier filing.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER90-140-000]

January 12, 1990.

Take notice that on January 5, 1990, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule D, providing for long-term interchange service between Tampa Electric and St. Cloud Electric Utilities (St. Cloud). The service schedule is submitted as a supplement to the existing agreement for interchange service between Tampa Electric and St. Cloud, designated as Tampa Electric's Rate Schedule FERC No. 17.

Tampa Electric also tendered for filing, as a supplement to Service Schedule D, a Letter of Commitment providing for the sale by Tampa Electric to St. Cloud of capacity and energy from Tampa Electric's coal fired generating units, at an hourly delivery rate of 24 megawatts.

Tampa Electric proposes an effective date of January 1, 1990, for the Service Schedule D and Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on St. Cloud and the Florida Public Service Commission.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

11. Long Sault, Inc.

[Docket No. ER90-137-000]

January 12, 1990.

Take notice that Long Sault, Inc. (Long Sault or Company) on January 4, 1990, tendered for filing proposed changes to its Rate Schedule FERC No. 15 relating to the Transmission Agreement, dated September 7, 1988 with the St. Lawrence County Electric Distribution Agency, which Agreement was originally accepted for filing by the Commission on February 28, 1989. Rate Schedule FERC No. 15 provides rates for Long Sault to perform for the St. Lawrence County Electric Distribution Agency certain transmission services and for Long Sault to make available certain transmission Facilities located near Massena, New York. Because it has been determined the St. Lawrence County Electric Distribution Agency is not eligible to purchase Niagara Development Power from the New York Power Authority, the Transmission Agreement has been assigned to the Town of Massena, Electric Department.

Long Sault requests an effective date of July 28, 1989.

Copies of this filing were served on the St. Lawrence County Electric Distribution Agency and the Town of Massena, Massena Electric Department.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Utah Power & Light Company

[Docket No. ER90-83-000]

January 12, 1990.

Take notice that Utah Power & Light Company (Utah) tendered for filing on January 5, 1990, additional information in connection with its filing in this docket. Utah states that it is providing this information at the request of the commission staff.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

13. San Diego Gas & Electric Company

[Docket No. ER89-578-000]

January 12, 1990.

Take notice that on January 8, 1990, San Diego Gas & Electric Company tendered for filing an amendment to its earlier filing of an Interchange Agreement between Turlock Irrigation District and San Diego Gas & Electric Company. In the amended filing San Diego Gas & Electric Company submits a revised energy charge which is proposed to be at least the incremental cost of the service but not more than 115% of the incremental cost.

The amended Exhibit A unbundles the rate, stating separately the fixed and fuel components. Amended Exhibit A also provides that incremental fuel cost is based on current, rather than historical fuel expenses.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of August 1, 1989 for this Agreement.

Copies of the amended filing were mailed to the Public Utilities Commission of the State of California and Turlock.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER90-131-000]

January 12, 1990.

Take notice that Florida Power Corporation (FPC) on January 2, 1990, tendered for filing an Agreement for Supplemental Resale Service with the Kissimmee Utility Authority (KUA). FPC requests waiver of the Commission's notice requirements to allow the Agreement to become effective January 1, 1990. The Agreement provides for sale of base, intermediate and peaking service.

According to FPC, a copy of this filing has been served on KUA and the Florida Public Service Commission.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Smith Falls Hydropower

[Docket No. ER90-104-000]

January 12, 1990.

Take notice that Smith Falls Hydropower tendered for filing on December 26, 1989, copies of Exhibits C, D and E of the power sales contract tendered for filing in this docket on December 12, 1989.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER90-93-000]

January 12, 1990.

Take notice that January 4, 1990, Consolidated Edison Company of New York, Inc. (Con Edison) tendered an amendment of its December 4, 1989 filing. This amendment provides additional information regarding cost support for the sale of firm power and energy to the Connecticut Light and Power Company (CL&P).

Con Edison states that a copy of this amended filing has been served by mail upon CL&P.

Comment date: January 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-1204 Filed 1-18-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA90-1-18-001]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 11, 1990

Take notice that Texas Gas Transmission Corporation (Texas Gas), on December 29, 1989, tendered for filing the following revised tariff sheets on its FERC Gas Tariff, Original Volume No. 1:

First Substitute Twenty-third Revised Sheet No. 10.

First Substitute Twenty-third Revised Sheet No. 10A.

Texas Gas states that these tariff sheets reflect revisions to the projected

purchased gas costs contained in the Annual PGA, Docket No. TA90–1–18–000, filed December 1, 1989, pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and are proposed to be effective February 1, 1990.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before January 19, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–1205 Filed 1–18–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 89–63–NG]

Amerigas International Corp.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Amerigas International Corporation blanket authorization to export from the United States to Mexico up to 54.75 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, January 10, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–1277 Filed 1–18–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–64–NG]

Libra Marketing, Inc.; Order Granting Blanket Authorization To Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order granting blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Libra Marketing, Inc., blanket authorization to export from the United States to Mexico up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, January 11, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–1278 Filed 1–18–90; 8:45 am]

BILLING CODE 6450–01–M

Battelle Memorial Institute

AGENCY: Office of the General Counsel, DOE.

ACTION: Notice of intent to grant partially exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Battelle Memorial Institute of Columbus, Ohio, a partially exclusive license to practice the invention described in U.S. Patent No. 4,376,598, entitled "In-situ Vitrification of Soil" and counterparts in Great Britain, France, Canada, West Germany, Italy, and Japan. The invention is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed license will be partially exclusive, i.e., limited to the field of use of radioactive waste management, subject to a license and other rights retained by the U.S. Government.

DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention for practice of the invention in the field of use of radioactive waste management, in which applicant states that, in such field of use, he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATE: Written comments or nonexclusive license applications are to be received at the address listed below no later than January 20, 1990.

ADDRESS: Office of Assistant General Counsel for Patents, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Patents, U.S. Department of Energy, Forrestal Building, room 6F–067, 1000 Independence Avenue, 20585; telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Battelle Memorial Institute, of Columbus, Ohio, has applied for a partially exclusive license to practice the invention embodied in U.S. Patent No. 4,376,598, entitled "In-Situ Vitrification of Soil," and foreign counterparts, for practice of the invention in fields of use of radioactive waste management. Applicant has submitted a plan for commercialization of the invention, in such field of use, contingent on obtaining exclusivity.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The

Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on January 12, 1990.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 90-1279 Filed 1-18-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3706-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5076. Availability of Environmental Impact Statements Filed January 8, 1990 Through January 12, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900008, Draft, FHW, AL, I-59/I-759 Interchange to US 11 and US 431/US 278, Construction, Funding, Etowah County, AL, Due: March 5, 1990, Contact: Joe D. Wilkerson (205) 832-7370.

EIS No. 900009, Draft, COE, WV, South Fork South Branch Potomac River (Formerly Moorfield River) Local Flood Protection Plan, Implementation, Hardy County, WV, Due: March 5, 1990, Contact: J. William Haines (301) 962-8154.

EIS No. 900010, Draft, USA, HI, Fort DeRussy Armed Forces Recreation Center Development, Construction, Implementation, Oahu Island, County of Honolulu, HI, Due: March 5, 1990, Contact: David Sox (808) 438-5030.

EIS No. 900011, Final, FAA, MI, Detroit Metropolitan Wayne County Airport, Construction and Extension, Airport Layout Plan, Approval and Funding Wayne County, MI, Due: February 20, 1990, Contact: Ernest Gubry (313) 484-4040.

EIS No. 900012, Draft, FHW, WI, US 53 Improvements, Trego to Kent Road, Funding and Section 404 Permit, Washburn and Douglas Counties, WI, Due: March 5, 1990, Contact: James Wenning (608) 264-5956.

EIS No. 900013, Draft, DOE, WA, Washington Water Power and British Columbia Hydro 230kV Transmission Interconnection, Construction, Oepration and Maintenance, Presidential Permit, Pend Oreille, Spokane, Stevens and Lincoln Counties, WA, Due: March 13, 1990, Contact: Anthony J. Como (202) 586-5935.

Dated: January 16, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-1296 Filed 1-18-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3706-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 2, 1990 through January 5, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EJSs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-J61082-UT, Rating EC2, Snowbasin Four Season Destination Resort, Development, Wasatch-Cache National Forest, Weber and Morgan Counties, UT.

Summary: EPA has concerns with the projects' lack of information related to potential impacts to hydrology and wetland areas if the proponent's proposal as submitted is approved.

ERP No. D-BLM-J65155-CO, Rating EC2, San Luis Planning Area, Land and Resource Management Plan, Implementation, Alamosa, Costilla Saguache, Conejos and Rio Grande, CO.

Summary: EPA has environmental concerns with the preferred alternative, and cites the need for additional plan implementation coordination between adjacent landowners/management agencies and the BLM. Additional water quality information was also requested.

ERP No. DS-NOA-L90003-00, Rating LO, Longline and Pot Gear Sablefish Management, Revision to Management Plan, Approval and Implementation, Gulf of Alaska, Bering Sea and Aleutian Islands, AK.

Summary: EPA has no objections to the proposed activity as described in this document.

Final EISs

ERP No. F-AFS-J65146-WY, Bridger-Teton National Forest, Land and Resource Management Plan, Implementation, Teton, Fremont, Lincoln, Sublette, Sweetwater and Uinta Counties.

Summary: EPA has no further comments to this document, since no significant changes were made from the draft EIS.

Dated: January 16, 1990.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 90-1297 Filed 1-18-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in §572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200120-001.

Title: Fairway Terminal Corporation (Fairway) Shareholders Agreement.

Parties: Young and Company; I.T.O. Corporation; and Stevens Shipping and Terminal Company.

Synopsis: The Agreement adds and deletes members and amends and restates Fairway's basic shareholders operating agreement for stevedore and terminal services at Barbours Cut Terminal, Houston, Texas to expand its stevedore and terminal services to ports and other locations throughout the state of Texas. The Agreement also provides that the owners of Fairway agree not to compete with Fairway in the State of Texas.

By order of the Federal Maritime Commission.

Dated: January 12, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-1184 Filed 1-18-90; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200137–003.

Title: Georgia Ports Authority Terminal Agreement.

Parties: Georgia Ports Authority Jugolinija.

Synopsis: The Agreement grants Jugolinija the option to extend the term of the basic agreement for a two-year period beginning August 1, 1990.

By order of the Federal Maritime Commission.

Dated: January 12, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1185 Filed 1–18–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Line of Business Data; Revision of Confidentiality Rules and Procedures

AGENCY: Federal Trade Commission.

ACTION: Revision of confidentiality rules for line of business data.

SUMMARY: The confidentiality rules for Line of Business ("LB") data at the Federal Trade Commission currently prohibit an employee of the Commission's Bureau of Economics who has access to individual companies' LB data from working on law enforcement matters unless a custodian of LB data certifies, and the General Counsel's Office concurs, that the employee's law enforcement assignment does not create a risk that LB data might be used for law enforcement purposes. The rules are being revised to replace the certification requirement with a provision that, if a Bureau of Economics employee is assigned to a Commission law enforcement matter involving an LB reporting company, and activities for the years 1971 through 1979 are at issue, the employee may not have access to LB data for that company or to individual companies' LB data pertaining to the industry at issue. This change, which is necessitated by reorganization and reduced staff levels in the Bureau of Economics, should have little practical effect because it essentially codifies the criteria that are customarily applied in deciding whether LB data might be relevant to an employee's law enforcement assignment. Additionally, the prohibition against using individual companies' LB data for law enforcement purposes remains in effect. The revised rules also grant access to the Director of the Bureau of Economics and enlarge the purposes for which employees of the Commission's Automated Systems Division may have access to LB data.

These revisions will take effect on publication, but the Commission will receive comments for 45 days after publication, after which it will take whatever action is appropriate in light of the comments.

ADDRESS: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Comments will be entered on the public record in Room 130 at the above address during normal business hours.

FOR FURTHER INFORMATION ABOUT THESE CONFIDENTIALITY RULES AND PROCEDURES CONTACT: Joanne L. Levine (202) 326–2474, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The LB confidentiality rules were last revised in April 1986 (51 FR 12743). Prior to those revisions, the Commission limited most uses of LB data to staff in the LB Program, who could not work on any Commission law enforcement matters (see, *e.g.*, 46 FR 62703, 62707 (1981)). This limitation was a voluntary measure designed to prevent inadvertent violations of the penultimate paragraph of section 6 of the Federal Trade Commission Act, 15 U.S.C. 46, which prohibits using individual companies' LB data for law enforcement purposes.[1] Because constraints on staff size made it necessary to eliminate the LB Program and integrate its staff into the rest of the Bureau of Economics, the Commission revised the LB confidentiality rules in 1986 to permit Bureau employees to continue their research with LB data.

The 1986 revisions created the positions of a custodian, responsible for supervising access to and physical security of LB data, and a disclosure avoidance officer, responsible for ensuring that publicly released aggregated data do not reveal individual company data. The rules permitted Bureau of Economics employees having access to LB data to work on law enforcement matters if the LB custodian certified, and the General Counsel's Office concurred, that the assignment would not create a risk that LB data would be used in proceedings to carry out specific law enforcement responsibilities of the Commission. See 51 FR at 12744–45.

The 1986 confidentiality rules implicitly contemplated that the Bureau of Economics would have one or more employees with no law enforcement responsibilities who could serve as custodians and disclosure avoidance officers, positions that respectively required sufficient understanding of the Commission's work to assess whether LB data could be relevant to other employees' law enforcement assignments, and knowledge of disclosure avoidance procedures. Since 1986, however, the Bureau of Economics' workload has required that virtually every economist be assigned to law enforcement matters some of the time. This has created difficulty in finding qualified persons to serve as custodians and disclosure avoidance officers who would not constantly be required to obtain new certifications with each new assignment.

Accordingly, the Commission is eliminating the rules' certification requirement. In its place, the rules specify that if a Bureau of Economics employee (other than support staff) is assigned to a Commission law enforcement matter involving an LB reporting company, and if the activities for the years 1971 through 1979 are at issue in the law enforcement matter, the employee may not have access to LB data for that company or to individual companies' LB data pertaining to the industry at issue during the pendency of the assignment. The prohibition against using individual companies' LB data for law enforcement purposes remains in effect for all assignments.

The Commission believes that this revision will not increase the likelihood that individual companies' LB data will be used for law enforcement purposes in contravention of Section 6. First, very few full-time Bureau of Economics employees have access to or do research with LB data. Second, those who do will still be required to certify that they will

[1] Section 6 does not itself require segregation of employees having access to LB data or impose limitations on the kind of work they may do at the Commission.

comply with all restrictions on LB data, including the restrictions on use of LB data. Third, the LB data are now 12 to 16 years old, making it highly unlikely that they would be useful in Commission law enforcement proceedings, notwithstanding their value for general economic research. Accordingly, the revised rule should be sufficient to prevent uses of LB data for purposes prohibited by section 6.[2]

The rules are also being revised to permit employees of the Commissions Automated Systems Division to act as custodians of and disclosure avoidance officers for LB data. This change results from the transfer of the Bureau of Economics' Litigation Support Division—some of whose employees had at times filled those roles—to the Automated Systems Division. Additionally, there are several editorial changes in the rules' language that do not affect their substance.

Because the LB confidentiality rules are procedural, they do not require the notice-and-comment procedures of 5 U.S.C. 553,[3] and accordingly they will take effect immediately. However, for 45 days after publication, the Commission will receive comments and endeavor to respond to them, modifying the revised rules if necessary.

Confidentiality Rules and Procedures for Line of Business Reports

Notice is hereby given that the Federal Trade Commission has approved and adopted revisions to rules and procedures prescribing the confidential handling and use of reports filed by companies pursuant to an Order to File Special Report under the Line of Business ("LB") Program.

(1) The following definitions apply to these rules:

"Individual company data" are identifiable individual company data contained in or taken from a report filed by a company pursuant to an Order to File Special Report under the LB Program.

"LB activities" are activities concerned with planning, developing, and preparing statistical and economic reports prepared with LB data. Such activities include processing, storing, and retrieving data form LB Report Forms, research with LB data, publication of aggregated LB data, administrative support, and other ancillary functions.

"Employee" refers to employees, special employees, and officers of the Commission.

(2) These rules and procedures are authorized by the penultimate paragraph of section 6 of the Federal Trade Commission Act, 15 U.S.C. 46, which states:

> No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on the date of the enactment of the Federal Trade Commission Improvements Act of 1980, or as changed by law.

(3) Under these rules, the Commission will not disclose individual company data to any person outside the Commission, including Congress, parties in court proceedings, governmental agencies, and members of the public, except pursuant to a superseding act of Congress; or pursuant to a court order, but only after all avenues for judicial relief have been exhausted. If the Commission receives a subpoena for individual company data, it will promptly notify the reporting companies that supplied the data (unless it is legally precluded from doing so).

(4) Individual company data may be used to prepare Commission-authorized aggregated statistical reports and other research studies and publications, which may then be used in connection with any Commission investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission. However, data in such studies and publications shall not be compiled in such a way that individual company data can be identified.

(5) Commission employees authorized to have access to and use of individual company data shall not disclose such data, nor in any way provide access to them, to unauthorized persons; nor shall they use individual company data in connection with any Commission investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission. Disclosures of individual company data that are not authorized by the Commission or directed by a court are punishable by fine or imprisonment under section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, and under 18 U.S.C. 1905; and the theft, conversion, or unauthorized conveyance of such data is also punishable under 18 U.S.C. 641.

(6)(a) Except as described in paragraph 7 below, access to and use of individual company data within the Commission shall be restricted to sworn employees of the Commission's Bureau of Economics (including its Director) who are designated by the Director of the Bureau of Economics to work with individual company data (or to assist in doing such work) in connection with LB activities.

(b) Every employee who is designated to have access under this paragraph shall be formally notified in writing that he or she is subject to these rules, to section 10 of the FTC Act and to 18 U.S.C. 641 and 1905. Each employee so designated shall certify that he or she will abide by these rules and amendments to them, and that after the designation is terminated, he or she will not retain any documents or materials containing individual company data, or statistics derived from such data, that the Commission has not authorized to be disclosed publicly. When a designation is terminated, the employee shall certify that he or she does not possess any such nonpublic information or materials, and understands that individual company data may not be used for unauthorized purposes or disclosed to unauthorized persons.

(c) If an employee designated under paragraph 6 is assigned to a Commission law enforcement matter that involves an LB reporting company and if the matter involves activities that occurred or market conditions that existed during one or more years between 1971 and 1979 (inclusive), he or she shall not have access to LB data for that company or to individual companies' LB data for the industry categories at issue during the pendency of the assignment. (The employee's access to other LB data, however, shall not be affected.) Further, the employee shall remain fully subject to the prohibition against using individual company LB data for law enforcement purposes. The LB data access restrictions in this subparagraph shall not apply to clerical employees and computer support specialists whose only role in law enforcement is to provide ancillary support services.

(d) The Director of the Bureau of Economics shall appoint one or more custodians, who shall be responsible for devising and supervising procedures for the safekeeping of individual company data. The Director shall also appoint one

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[2] In view ofthis revision, the Commission is eliminating as an unnecessary anachronism the provision forbidding the Director of the Bureau of Economics from having access to LB data.

[3] *Aluminum Co. of America* v. *FTC*, 1984–1 Trade Cas. (CCH) ¶ 65995, at 68401 (S.D.N.Y. 1984). See also, *e.g.*, *Shell Oil Co.* v. *Department of Energy*, 477 F. Supp. 413, 437 (D. Del. 1979), *aff'd*, 631 F.2d 231 (3d Cir.), *cert. denied*, 450 U.S. 1024 (1981).

or more disclosure avoidance officers, who shall be responsible for establishing procedures to comply with paragraph 6(e). (A single person may serve as both a custodian and a disclosure avoidance officer.)

(e) Before any document based on individual company data may be disseminated to persons who are not designated pursuant to paragraphs 6 or 7, the document shall be subjected to procedures sufficient to assure that individual company data cannot be identified from the document, and a disclosure avoidance officer shall certify to the Director of the Bureau of Economics that he or she has reviewed and approved the procedures applied to the document, and that it does not identify individual company data.

(7) Sworn Commissioners and employees in the organizational units of the Commission specified below (or in equivalent successor units) are also designated to receive access to individual company data for the purposes noted.

(a) The Commissioners and their assistants may have access to individual company data as needed to make decisions concerning LB activities.

(b) The General Counsel and his or her staff may have access to individual company data as needed in order to advise the Commission or the Bureau of Economics concerning LB activities and to represent the Commission in pending or anticipated litigation concerning LB activities.

(c) Employees in the Automated Systems Division in the office of the Executive Director may have access to individual company data for the purpose of electronic processing of individual company data, and for serving as a custodian or disclosure avoidance officer. The Division may employ the services of an outside computer facility for data processing, subject to the restriction that no one other than designated sworn employees of the Federal Trade Commission may examine individual company data. Any such outside computer facility shall sign an agreement assuring that the facility and its employees abide by this restriction and other applicable restrictions in these rules and the FTC Act.

(d) The Division of Personnel may have access to individual company data, but only to the extent necessary for personnel actions concerning employees' work with LB data. The Division will not retain any individual company data in its offices.

(e) The Secretary, Attorney-Advisor to the Secretary, Chief of the Records Division, and their assistants, and employees of the Minutes Branch, may have access to documents containing, and to Commission meetings discussing, individual company data. Their access will be limited to that required for official recordkeeping purposes related to LB activities, including transcription of Commission meetings, preparation of Commission minutes, and filing of Commission records. Documents containing individual company data shall be kept, when not in use, in a locked drawer, cabinet, or safe. However, memoranda, minutes, transcripts, and other such records from which individual company data have first been deleted may be stored and used without being subject to restrictions applicable to individual company data.

(f) Before any Commission member or employee may examine individual company data pursuant to paragraph 7, he or she shall certify that during the assignment he or she will abide by these rules and amendments to them, and that after termination of the assignment requiring access, he or she will not retain any documents or materials that contain individual company data.

(8) Any employee designated pursuant to paragraphs 6 and 7 shall be personally responsible for ensuring that individual company data in the employee's possession are not disclosed to unauthorized persons and are not used for law enforcement purposes.

(9) These rules shall also apply to Quarterly Financial Reports ("QFR") from individual companies.

(10) These rules shall not be construed to:

(a) Prohibit disclosure of the fact that a company filed an LB Report, provided that disclosure is not in a form that reveals individual company data.

(b) Prohibit disclosure or use of information that was furnished by a reporting company in a document other than an LB or QFR Report Form, or of any information that the Commission has obtained through means other than an Order to File Special Report under the LB or QFR Program. The confidentiality of such other information shall be determined in accordance with other laws, including sections 6(f) and 21 of the FTC Act, 15 U.S.C. 46(f), 57b–2.

(c) Limit the authority of the Commission to require by subpoena or other compulsory process the production of any information or data from any source outside the Commission for use in connection with an investigation or proceeding for carrying out specific law enforcement responsibilities of the Commission.

By direction of the Commission, dated January 10, 1990

Donald S. Clark,

Secretary.

[FR Doc. 90–1276 Filed 1–8–90; 8:45 am]

BILLING CODE 6750–01–M

Octane Posting and Certification

AGENCY: Federal Trade Commission.

ACTION: Grant of partial exemption from the Commission's octane rule.

SUMMARY: The Commission has responded to the petition of the Sun Oil Company ("Sunoco"), requesting permission to post octane ratings by use of an octane label that differs from certain of the specifications contained in the Commission's Octane Posting and Certification Rule. The Commission has granted the partial exemption, which will pertain only to the multi-blend gasoline dispensers that Sunoco purchases from Dresser-Wayne, Inc. Pursuant to Rule 1.26 of the Commission's Rules of Practice, the Commission grants, for good cause, the requested relief without a notice and comment period because the Commission finds that such a procedure is unnecessary to protect the public interest in this case.

EFFECTIVE DATE: January 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neil J. Blickman, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3038.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Posting and Certification Rule in the **Federal Register** (44 FR 19160). The rule established procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers.

Section 306.9 of the Rule provides that retailers must post at least one octane rating label on each face of each gasoline dispenser. Retailers who sell sell two or more kinds of gasoline with different octane ratings from a single dispenser must post separate octane rating labels for each kind of gasoline on each face of the dispenser. Labels must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per gallon of the gasoline.

Section 306.11 of the Rule details specifications for the labels. Labels must be 3 inches wide by 2½ inches long, and

Helvetica type must be used for all text except the octane rating number, which must be in Franklin Gothic type. Type size for the text and numbers is specified, and the type and border must be process black on a process yellow background. The line "MINIMUM OCTANE RATING" must be in 12 point Helvetica bold, all capitals, with letter space set at 12½ points. The line "(R+M)/2 METHOD" must be in 10 point Helvetica bold, all capitals, with letter space set at 10½ points. The octane number must be in 96 point Franklin Gothic Condensed, with ⅛ inch spacing between the numbers. Section 306.11(d) of the rule further states that no marks or information other than that called for by the Rule may appear on the label.

In 1979, Sunoco petitioned the Commission for permission to post octane ratings by use of an octane label that differs from the label specifications described in the Rule. On June 12, 1979 (44 FR 33740), the Commission authorized Sunoco to use the following labeling system for its multi-blend dispensers: A label 1¾ inches wide by 1⅜₁₆ inches long on which the octane number would be displayed, and the words "Minimum Octane Rating/(R+M)/2 Method" would appear twice on the dispenser in boxes forming arrows that point in the direction of, and in close proximity to, the octane numbers.

Sunoco's Current Proposal

Sunoco presently purchases three models of multi-blend gasoline dispensers from Dresser-Wayne, Inc. Generically, they are known as Wayne Mechanical, Wayne Retro and Wayne Multi-Grade Blender dispensers. For such dispensers, Dresser-Wayne has developed a gasoline dispenser control panel consisting of large square switches in the form of selector buttons with the octane labels inserted inside. Consumers press the selector buttons to activate the pump to dispense the desired fuel grade, the octane rating for which is designated on the label. However, Sunoco has found that the octane labels the Commission authorized it to use in 1979 are slightly wider than the area available behind the selector buttons. Cutting the label to fit the space would, of course, be a violation of the Octane Rule. For that reason, and others described below, Sunoco petitioned for another partial exemption from the Octane Rule.[1]

[1] Sunoco is a major refiner, distributor and retailer of gasoline. Its petition is contained in a letter dated January 19, 1989, which was supplemented by a letter dated August 21, 1989.

Specifically, in connection with its use of Dresser-Wayne's multi-blend gasoline dispensers, Sunoco petitioned the Commission to permit it to use an octane label that differs in three respects from the label specifications described in §§ 306.11 (a) and (d) of the Octane Rule and from the labeling it is authorized to use as a result of its current exemption from the Rule:

(1) In order to conform with the dimensions of the control panel dispenser switches Dresser-Wayne has developed (a design that restricts the size of the selector buttons and, therefore, the size of the octane labels), it requested permission to use an octane label that is 1⅝₁₆ inches wide by 1⅝₁₆ inches long instead of a label that is either 1¾ inches wide by 1⅜₁₆ inches long as permitted by the Commission for use by Sunoco, or 3 inches wide by 2½ inches long as specified in the Rule. The proposed new label is 7/16 inches less wide and ⅛ inches longer than the one presently allowed. In addition, it requested permission to display the octane rating on the label in Helvetica Compressed type, 6 picus high, instead of setting the octane number in 96 point Franklin Gothic Condensed type as specified in the Rule;

(2) In order to show consumers how to use this type of octane selection switch, Sunoco requested permission to place the word "PRESS," in Helvetica Extra-Bold type, beneath the octane number on the label. The Commission granted a similar request to Gilbarco, Inc., in 1988 (53 FR 29277); and

(3) Due to limited available area on the pumps and their design, Sunoco requested permission to display the words "Minimum Octane Rating/(R+M)/2 Method" once on the dispensers, in close proximity to the octane labels, instead of twice as it agreed to do in 1979.

Sunoco contended that market research has led the company to conclude that the modifications it requested will more clearly instruct its retail gasoline customers on how to operate the aforementioned Dresser-Wayne dispensers. Also, since the octane label is inserted into the button that selects the blend for dispensing the gasoline, Sunoco asserted its customers will focus immediately on the octane label, which will help them identify the appropriate octane number with its corresponding blend.

The Commission has decided that the above-described labeling format is adequate to meet the Octane Rule's posting objective as it provides clear, conspicuous and easily readable disclosure of all Rule-required information. In addition, the variance does not adversely affect the public interest. Therefore, the Commission has decided to grant Sunoco permission to use its proposed labeling system on the multi-blend gasoline dispensers it purchases from Dresser-Wayne, Inc., provided that Sunoco will also comply with the Rule's octane label specifications in all other respects.

The Commission notes also that, by its action granting Sunoco's petition, the Commission is not authorizing gasoline companies to adopt any octane labeling system that might conveniently conform to current gasoline dispenser designs and technology. Unless granted an exemption by the Commission, octane labels must follow the Octane Rule's label specifications at all times. Any octane labeling system that does not follow the Rule's specifications requires advance approval by the Commission; and the Commission will look with disfavor on any octane labeling plan that does not comply with the Rule's labeling requirements, and for which an exemption has not been sought in advance of its use.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-1275 Filed 1-18-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority

Part A, Chapter AG (Office of the General Counsel) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (as amended most recently at 53 FR 48980, December 5, 1988) is amended to add the position of Special Counsel for Ethics who is the Designated Agency Ethics Official in accordance with the Ethics In Government Act (5 U.S.C. App. 4). Standards of Conduct counselling is deleted from the Statement of Functions of the Business and Administrative Law Division.

Sections AG.00 through AG.22A3 are reprinted in their entirety to incorporate these changes.

AG.00 *Sec. Mission* The General Counsel, as special advisor to the Secretary of legal matters, is responsible for providing all legal services and advice to the Secretary, Under Secretary, and all subordinate

organizational components of the Department in connection with the operations and administration of the Department.

Section AG.10 Organization.

The Office of the General Counsel under the supervision of a General Counsel consists of:

1. Immediate Office of the General Counsel.
2. Divisions in the Office of the General Counsel.
3. Offices of the Regional Attorneys.

Section AG.12 The General Counsel.

A. The General Counsel is directly responsible to the Secretary.

B. In the event of the General Counsel's absence or disability or during a vacancy in the office of General Counsel, the Principal Deputy General Counsel shall act in his place. In the event of a vacancy in the offices of General Counsel and Principal Deputy General Counsel, the Secretary shall designate an Acting General Counsel.

C. Each division is under the general supervision of the General Counsel, the Principal Deputy General Counsel and, to the extent applicable, the Deputy General Counsel. Each division is under the immediate supervision of an Associate General Counsel/Chief Counsel [program].

Section AG.14 Immediate Office of the General Counsel.

A. The Immediate Office of the General Counsel consists of:

1. The General Counsel;
2. Principal Deputy General Counsel;
3. Deputy General Counsel;
4. Deputy General Counsel-Legal Counsel;
5. Special Counsel for Ethics;
6. Executive Assistant to the General Counsel.

Sec. AG.15 Ten Regional Attorneys.

Section AG.18 Divisions in the Office of the General Counsel.

The Divisions of the Office of the General Counsel are:

Business and Administrative Law Division
Civil Rights Division
Inspector General Division
Food and Drug Division
Legislation Division
Public Health Division
Health Care Financing Division
Social Security Division
Family Support and Human Development Division

Sec. AG.20 Functions. The General Counsel is authorized to promulgate such directives, in accordance with established procedures, as are necessary to carry out the responsibilities assigned. The Office of the General Counsel is responsible for:

1. Furnishing all legal services and advice to the Secretray, Under Secretary, and all offices, branches, or units of the Department in connection with the operations and administration of the Department.
2. Furnishing legal services and advice on such other matters as may be submitted by the Secretary, the Under Secretary, and any other person authorized by the Secretary to request such service or advice.
3. Representing the Department in all litigation when such direct representation is authorized by law, and in other cases making and supervising contacts with attorneys responsible for the conduct of such litigation.
4. Performing all liaison functions in connection with legal matters involving the Department, and formulating or reviewing requests for formal opinions or rulings by the Attorney General and the Comptroller General.
5. Drafting all proposals for legislation originating in the Department and reviewing all proposed legislation submitted to the Department or to any operating agency of the Department for comment, preparing reports and letters to congressional committees, the Office of Management and Budget, and others on proposed legislation; prescribing procedures to govern the routing and review, within the Department, of material relating to proposed Federal legislation.
6. Performing liaison functions with the Office of the Federal Register, National Archives and Records Service.
7. Generally supervising all legal activities of the Department and its operating agencies and directing the activities of the legal staff in the field.

Section AG.21 Immediate Office of the General Counsel.

A. The General Counsel:

1. Is responsible to and serves as Special Advisor to the Secretary on legal matters in connection with the administration of the Department.
2. Exercises general direction and supervision over all legal activities carried on by the Department.

B. The Principal Deputy General Counsel assists the General Counsel in developing formal and informal advice issued by the Office of the General Counsel and supervises the Associate General Counsels/Chief Counsels [program] in the issuance of legal advice. In the absence or disability of the General Counsel or during a vacancy in the office of General Counsel the Principal Deputy General Counsel shall serve as the Acting General Counsel.

C. The Deputy General Counsel assists the General Counsel by coordinating efforts by the Offices of the Regional Attorney, carrying out office-wide management responsibilities, and performing such other duties as the General Counsel prescribes.

D. The Deputy General Counsel-Legal Counsel assists the General Counsel in providing formal and informal legal advice and opinions to the Secretary, the Under Secretary, and the Assistant Secretaries relating to major new policy directions, innovative programs not clearly delineated by statutory authority, and Departmental programs and initiatives involving more than a single operating component of the Department.

E. The Special Counsel for Ethics assists the General Counsel by providing legal advice to officials of the Department regarding ethics and other standards of conduct issues and serves as the Designated Agency Ethics official responsible for Department-wide activities required by the Ethics in Government Act (5 U.S.C. App. 4).

F. The Executive Assistant performs such administrative tasks in accordance with established procedures as are necessary to maintain routine operation of the Office of the General Counsel.

Section AG.22 Divisions in the Office of the General Counsel.

A. The Divisions in the Office of the General Counsel, under the direction of an Associate General Counsel/Chief Counsel [program] have the following responsibilities:

1. Business and Administrative Law Division. The Business and Administrative Law Division shall be responsible for:

a. Legal services on business management activities and administrative operations throughout the Department, including procurement, contracting, copyrights, personnel, budget, appropriations, employment, compensation, travel and claims by and against the Department.

b. Legal services for the Department's surplus property, civil defense, and security programs.

c. Liaison with the Comptroller General.

d. Legal services under the National Environmental Policy Act.

e. Liaison with the Department of Justice on administration of the Freedom of Information Act.

2. Civil Rights Division. The Civil Rights Division shall provide legal services for the Office of Civil Rights.

3. Inspector General Division. The Inspector General Division shall provide legal services to the Inspector General and shall be responsible for prosecuting claims by the Department for civil

money penalties under section 1128A of the Social Security Act. 42 U.S.C. 1320a–7a.

Dated: January 10, 1990.

Kevin E. Moley,

Assistant Secretary for Management and Budget.

[FR Doc. 89–1183 Filed 1–18–89; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Immunization Practices Advisory Committee, HHS.

Date and Time: February 27, 1990, 8:30 a.m.–5 p.m.; February 28, 1990, 8:30 a.m.–1 p.m.

Place: Holiday Inn—Decatur Conference Center, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters To Be Discussed: The Committee will discuss draft recommendations for statements on rabies, adult immunization, and influenza; pneumococcal disease; chronic illness and rubella; *Haemophilus* influenzae b; and will consider other matters of relevance among the Committee's objectives. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Cheryl Counts, Staff Specialist, Centers for Disease Control (1–B46), 1600 Clifton Road NE., Mailstop A20, Atlanta, Georgia 30333, telephone: FTS: 236–3851; Commercial: (404) 639–3851.

Dated: January 12, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–1288 Filed 1–18–90; 8:45 am]

BILLING CODE 4160–18–M

Injury Research Grant Review Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following Committee meeting:

Name: Injury Research Grant Review Committee, HHS.

Time and Date: 8:30 a.m.–5 p.m., February 5–6, 1990.

Place: Marriott Perimeter Center, 246 Perimeter Center Parkway NE., Atlanta, Georgia 30346–2390.

Status: Open 8:30 a.m.–9:30 a.m., February 5, 1990; Closed 10 a.m., February 5, 5 p.m., February 6, 1990.

Purpose: This Committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research and demonstration projects and injury prevention research centers.

Matters To Be Discussed: Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications. Beginning at 10 a.m., February 5, through 5 p.m., February 6, the Committee will conduct its review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(6), title 5 U.S.C., and the determination of the Acting Director, CDC, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Thomas Bartenfeld, Grants Manager, Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, 1600 Clifton Road NE., Mailstop F36, Atlanta, Georgia 30333, telephone: FTS: 236–4265; Commercial: 404/488–4265.

Dated: January 11, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–1289 Filed 1–18–90; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 90N–0016]

Drug Export; Haemophilus b Conjugate Vaccine (Diphtheria Toxoid-Conjugate)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Connaught Laboratories, Inc., has filed an application requesting approval for the export of the biological product Haemophilus b Conjugate Vaccine to the Federal Republic of Germany.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Inspections and Surveillance Staff (HFB–120), Center for Biologics Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Connaught Laboratories, Inc., Route 611, Swiftwater, PA, 18370–0187, has filed an application requesting approval for the export of the biological product Haemophilus b Conjugate Vaccine (Diphtheria Toxoid-Conjugate) to the Federal Republic of Germany. Haemophilus b Conjugate Vaccine is indicated for active immunization against haemophilus influenza, type B, in children over two months of age. The application was received and filed in the Center for Biologics Evaluation and Research on January 2, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by January 29, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: January 4, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-1186 Filed 1-18-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 26-27, 1990, Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. on February 26, to adjournment February 27, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building Room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 11, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-1216 Filed 1-18-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of National Arthritis Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on January 28 and 29, 1990. The meeting will be held at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington Virginia 22202. The subcommittees will meet January 28, 7:30 p.m. to approximately 10 p.m. and the full board will meet January 29, 8:30 a.m. to approximately 5 p.m. The meetings, which will be open to the public, are beng held to discuss the Board's activities and to continue evaluation of the Natinal effort to combat arthritis and musculoskeletal and skin diseases. Notice of the meeting rooms will be posted in the hotel lobby. Attendance by the public will be limited to space available.

Mr. John R. Abbott, Executive Secretary, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: January 11, 1990.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 90-1217 Filed 1-18-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on December 29, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package.)

1. Application Packet for Real Property for Public Health Purposes—NEW—States and local governments submit these applications to the Federal government to apply for surplus government real property. These applications are used to determine if institutions/organizations are eligible to lease, purchase or use property under the provisions of the surplus property programs. *Respondents:* State or local governments, non-profit institutions; *Number of Respondents:* 106; *Number of Responses per Respondent: 1; Average Burden per Response:* 200 hours; *Estimated Annual Burden:* 21,200 hours.

2. Initial Registration of Medical Device Establishment—0910-0059—Initial registration for Medical Device Establishments is required in accordance with section 510 of the Federal Food, Drug, and Cosmetic Act. Information collected assists in identifying establishments subject to FDA regulation under the Act, and also allows FDA to maintain and update a current inventory of medical device establishments. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 2,500; *Number of Responses per Response:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 2,500 hours.

3. PHS Contractors Profile System—0937-0120—The PHS Contractors Profile System application provides small and minority businesses the opportunity to be considered as sources to bid or propose on PHS acquisitions. The system is mandated by Public Law 95-507, Amendments to the Small Business and Small Business Investment Act of 1958. *Respondents:* Small businesses or organizations; *Number of Respondents:* 5,000; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.1 hours; *Estimated Annual Burden:* 500 hours.

4. Addendum to Financial Status Report—0937-0155—Local government and non-profit recipients of grant awards report on the status of funds which is reviewed by the awarding office for compliance with legal and administrative requirements. *Respondents:* State or local government, non-profit institutions; *Number of Respondents:* 1,500; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.25 hours; *Estimated Annual Burden:* 375 hours.

5. Survey to Evaluate the Impact of the Coronary Primary Prevention Trial on Medical Practice (1990)—NEW—NHLBI will sponsor a survey of practicing physicians to assess attitudes and behavior regarding blood cholesterol in order to evaluate the impact of the findings of the Coronary Primary Prevention Trial and the Adult Treatment Panel guidelines on clinical practice and to discern continuing educational needs of physicians. *Respondents:* Business or other for-profit, small businesses or organizations; *Number of Respondents:* 1,600; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 0.5

hours; *Estimated Annual Burden:* 800 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: January 12, 1990.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-1272 Filed 1-18-90; 8:45 am]

BILLING CODE 4160-17-M

Agency for Health Care Policy and Research; Meetings

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 bodies scheduled to meet during the month of February 1990:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: February 21-22, 1990, 8 a.m.

Place: Holiday Inn—Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland.

Open Fedruary 21, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness or efficiency of particular methods of health services delivery and financing, for the research grants program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting of February 21 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concering individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Gerald E. Calderone, Agency for Health Care Policy and Research, room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Services Research Review Subcommittee.

Date and Time: February 8-9, 1990 8 a.m.

Place: Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland.

Open Febraury 5, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by the Agency for Health Care Policy and Research.

Agenda: The open session of the meeting on February 8 from 8 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing research grant application relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. B. William Lohr, Agency for Health Care Policy and Research, room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Name: Health Care Technology Study Section.

Date and Time: February 12-13, 1990, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland.

Open February 12, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

Agenda: The open session on February 12 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, appendix 2 and title 5, U.S. Code 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning indivduals associated with the applications. The information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, Agency for Health Care Policy and Research, room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

Agenda items are subject to change as priorities dictate.

Dated: January 10, 1990.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 90-1199 Filed 1-18-90; 8:45 am]

BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on December 22, 1989.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Application for a Social Security Number Card/(Original, Replacement or Correction)—0960-0066—The information collection on the form SS-5 is used by the Social Security Administration to assign Social Security numbers to individuals so they can obtain employment, open bank accounts, report earnings, etc. The affected public consists of individuals who apply for Social Security numbers.

Number of Respondents: 15,000,000
Frequency of Response: 1
Average Burden Per Response: 8 minutes
Estimated Annual Burden: 2,000,000 hours

2. Petition To Obtain Approval of a fee for representing a claimant before the Social Security Administration—0960-0140—The information collected on the form SSA-1560 is used by the Social Security Administration (SSA) to determine if the fee charged by a representative of a claimant before SSA is reasonable payment for the services provided by the representative.

Number of Respondents: 88,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 44,000 hours

3. Farm Arrangement Questionnaire—0960-0064—The information collected on the form SSA-7157 is used by the Social Security Administration to determine whether income derived from farm rental may be considered self-employment income for Social Security coverage purposes. The affected public is comprised of individuals alleging self-employment income from the rental of land for farming activities.

Number of Respondents: 38,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 19,000 hours

4. Request for Withdrawal of Application—0960-0015—The information collected on the form SSA-521 is used by the Social Security Administration to effectuate an individual's withdrawal of claim for Social Security benefits. The affected public is comprised of individuals who wish to withdraw their claim for Social Security benefits.

Number of Respondents: 50,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 4,166 hours

5. Direct Deposit Cost-of-Living Notice Telephone Questionnaire—0960- —

The information collected on the form SSA-3116 is used by the Social Security Administration to evaluate the reaction of a sample of beneficiaries who received a message from SSA on their bank statements.

Number of Respondents: 400
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 67 hours

6. Request for Hearing by Administrative Law Judge—0960-0269—The information collection on the form HA-501 is used by the Social Security Administration to process a request for a hearing on an unfavorable determination. This form is used by individuals who request a hearing because they wish to rebut such determinations regarding their claims for benefits.

Number of Respondents: 313,695
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 52,282 hours

OMB Desk Officer: Justine Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 10, 1990.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89-1039 Filed 1-18-89; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-55]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: January 19, 1990.

ADDRESS: For further information contact James Forsberg, Department of Housing and Urban Development, room 7228, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6300; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: January 11, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Program Policy Development and Evaluation.

[FR Doc. 90-1104 Filed 1-18-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-610-00-4112-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44. U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004-0135), Washington, D.C. 20503, telephone 202-395-7340.

Title: 43 CFR 3160—Onshore Oil and Gas Operations, Sundry Notices and Reports on Wells

OMB Approval Number: (1004-0135)

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required

to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.
Bureau Form Numbers: 3160–5.
Frequency: On occasion.
Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.
Estimate Completion Time: 25 minutes.
Annual Responses: 34,000.
Annual Burden Hours: 14,166.
Bureau Clearance Officer: (Alternate) Gerri Jenkins, 202–653–8853.

Dated: December 7, 1989.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 90–1246 Filed 1–18–90; 8:45 am]

BILLING CODE 4310–84–M

[AA–610–00–4112–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act [44. U.S.C. chapter 35]. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0134), Washington, D.C. 20503, telephone 202–395–7340.

Title: 43 CFR 3160—Onshore Oil and Gas Operations' Non-form Items.
OH Approval Number: (1004–0134).
Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.
Bureau Form Numbers: None.
Frequency: Nonrecurring.
Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.
Estimate Completion Time: 0.5 hours
Annual Responses: 193,855.
Annual Burden Hours: 96,190.
Bureau Clearance Officer: (Alternate) Gerri Jenkins, 202–653–8853.

Dated: November 21, 1989.

Adam A. Sokoloski

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 90–1247 Filed 1–18–90; 8:45 am]

BILLING CODE 4310–84–M

[CA–067–000–4352.12]

Closure of Public Land to Vehicle Parking and Overnight Camping Within the West Mesa Area, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure of public land to vehicle parking and overnight camping.

SUMMARY: The purpose of this closure is to minimize environmental impacts resulting from recreational camping and day use around parked vehicles on lands within a portion of West Mesa. This closure will include the following public lands:

San Bernardino Base and Meridian

T. 14S., R.11E
SE¼SE¼SW¼, S½SE¼, NE¼SE¼, section 21.
SE¼SW¼NW¼, SE¼NW¼, SW¼SW¼ NE¼, SW¼, NW¼SE½, S½SE¼ section 22.
N½N½SE¼SE¼SE¼N½SW¼SE¼NE¼ SW¼NE½NW¼SW¼ section 27.
NE¼NE¼NW¼, N½NE¼, N½SE¼NE¼, NE¼SW¼NE¼, section 28.

The above aggregates approximately 1,120 acres in Imperial County, California which are located along BLM routes SF–272 and SF–3919, along the base of the Superstition Mountains and along the section line between sections 26 and 27, T. 14 S., R. 11 E. Posting the closure will be accomplished and enforcement intensified.

Law enforcement and other emergency vehicles on official duties, and search and rescue operations are exempt from these restrictions

BACKGROUND: This closure was identified during the route of travel designation decision process which became effective February 15, 1989. The general area which is used for camping by recreationists using the nearby Superstition sand dunes area, contains important habitat for the Flat-tailed Horned Lizard, a federal sensitive species. Closure of the specific lands to camping and parking use will eliminate intensive riding activities normally found in and around these sites, which negatively impacts this habitat. Flat-tailed Horned Lizard habitat, which is included in this closure, is expected to recover from impacts resulting from past intensive use. This closure will also protect cultural resources located within the boundaries. This area will remain open to vehicle use on approved routes as currently exist.

EFFECTIVE DATE: This closure will be effective January 19, 1990 remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Lana Tyler, B.L.M. Sector Ranger, Bureau of Land Management, 333 South Waterman, El Centro, California 92243, (619) 352–5842.

SUPPLEMENTARY INFORMATION: This authority for Closure Orders is provided at 43 CFR 8364.1. Violations of this closure are punishable by a fine of not to exceed $1,000 under/or imprisonment not to exceed 12 months.

Dated: January 8, 1990.

H.W. Riecken,

Acting District Manager.

[FR Doc. 90–1259 Filed 1–18–90; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Receipt of Applications for Endangered Species Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–745547.

Applicant: Diane and Arlen Chase, Orlando, Florida 32816.

The applicant requests a permit to reexport and reimport one wild-caught female margay (*Felis wiedii*) to and from Belize. Applicant will display the animal in Belize and the U.S. in a manner designed to educate the public with regard to this species' ecological role and conservation needs.

PRT–745541.

Applicant: SJM Biological Consultants, San Diego, CA.

The applicant requests a permit to take (live-trap for identification and release at capture-site, clipping of hair samples from representative animals, and using a marker pen to temporarily mark an animal for subsequent recapture) Stephen's kangaroo rat (*Dipodomys stephensi*) from either Riverside or San Diego Counties, California, for the purpose of enhancement of survival of the species.

PRT–745310.

Applicant: Carroll Beaman, Amarillo, TX.

The applicant requests a permit to import a sport-hunted trophy of a

bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd of V. L. Pringle, Huntley Glen, Bedford, Republic of South Africa, for the purpose of enhancement of propagation of the species.

PRT-745528.

Applicant: Michael Brandman Associated; Santa Ana, CA.

The applicant requests a permit to capture, measure, sex, take samples of hair, mark and release Stephens' kangaroo rats (*Dipodomys stephensi*) in western Riverside County, California. Information gathered from these captures will be used to determine the extent of occupied habitat and the presence of the species on sites proposed for development for the enhancement of survival of the species.

PRT-745715.

Applicant: The Peregrine Fund, Inc., Boise, ID.

The applicant requests a permit to export 10 captive-hatched Northern Aplomado falcons (*Falco femoralis septentrionalis*) to Mexico for release to the wild.

Document and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, P.O. Box 3507, Arlington, VA 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 16, 1990.

Susan M. Lawrence,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-1291 Filed 1-18-90; 8:45 am]

BILLING CODE 4310-AN-M

National Park Service

Farmington Wild and Scenic River Study, Massachusetts and Connecticut Farmington River Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1 § 10), that a meeting of the Farmington River Study Committee will be held Thursday, February 8, 1990.

The Committee was established pursuant to Public Law 99-590. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Farmington River segments.

The meeting will convene at 7:30 p.m. at the Riverton Volunteer Fire House, Riverton, Connecticut, for the following purposes:

1. Approval of minutes from 11/9/89 meeting
2. Election of officers for 1990
3. Discussion of budget status and presentation of revised work plan
4. Reports from Subcommittees:

A. Water Resources Subcommittee

1. 12/19/89 meeting
2. Public Workshop—tentatively scheduled for 2/13/90

B. River Conservation Planning and Public Involvement

1. Progress of Working Groups
2. "Assessment of River's Vulnerability"
3. Public Involvement: "Common Questions and Answers" handout; landowner and resident survey

5. Opportunity for public comment
6. Other business

A. Next meeting dates and locations

B. Possible events for "Earth Day" in April

Interested persons may make oral/written presentations to the Committee or file written statements. Such requests should be made to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from the Public Affairs Officer, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109 (617) 223-5199.

Gerald D. Patten,

Regional Director.

[FR Doc. 90-1290 Filed 1-18-90; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31584]

Delta Southern Railroad Co.; Acquisition and Lease Missouri Pacific Railroad Company Lines in Arkansas and Louisiana

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed December 21, 1989, by the Delta Southern Railroad Company (Delta Southern) and Missouri Pacific Railroad Company (MP) for Delta Southern to purchase 31.48 miles of MP line between Huttig, AR and Sterlington, LA, and to lease 9.82 miles of MP line between Sterlington and Monroe, LA. The Commission finds this a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than February 20, 1990. Comments from the Secretary of Transportation and the Attorney General of the United States must be filed by March 7, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list. Applicants' reply is due March 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. (TDD for hearing impaired: (202) 275-1721)

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31584, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and each of the applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street SW, Washington, DC 20590

Attorney General of the United States, Washington, DC 20530

Karl Morell (Delta Southern), 1025 Thomas Jefferson Street NW, Suite 700, Washington, DC 20007

Joseph D. Anthofer (MP), 1416 Dodge Street, Omaho, NE 68179

SUPPLEMENTARY INFORMATION: The Delta Southern Railroad Company (Delta Southern) and Missouri Pacific Railroad Company (MP), collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Delta Southern to purchase and lease for $200,000 certain properties of the MP. Applicants contend that this is a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation procedures in 49 CFR part 1180.

The properties subject to statutory prior approval requirements consist of: (1) 31.48 miles of MP line between Huttig, AR (milepost 524.7) and Sterlington, LA, (milepost 556.18) and (2) 9.82 miles of MP line between Sterlington (milepost 556.18) and Monroe, LA (milepost 566). The 31.48

miles of line are to be acquired, and the 9.82 miles of line are to be leased.

Delta Southern is a Class III rail carrier operating an 89.5-mile rail line between McGehee, AR and Tallulah, LA. Its present line does not connect with the line to be acquired and leased from MP. Delta Southern is wholly owned by Lawrence Beal.

MP is a Class I common carrier by railroad. The line at issue has four active shippers, originating or terminating 5,798 revenue carloads in 1988. Traffic consists primarily of chemicals, forest products, and sand.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, the shippers on the line enjoy substantial intermodal competition which will not be reduced by the transaction. The transaction, it is argued, will provide the shippers with more responsive rail service, enhance intramodal competition and also provide more effective intermodal competition for the many motor carriers and the pipeline in the region. Shippers on the line are presently served only by MP, and MP and Delta Southern do not compete for originating and terminating traffic on the line.

Applicants submit that Delta Southern's locally based operations will result in better, more efficient service to existing shippers. This service, it is argued, will allow them to capture motor carrier traffic, improving their financial viability.

Delta Southern plans to operate the line with its own employees under its own work rules, rates of pay and benefits. It is expected that the transaction will result in the abolishment of three MP positions, and MP intends to honor its obligations to its adversely affected employees under 49 U.S.C. 11347 and existing collective bargaining agreements. It has not yet negotiated any employee protective arrangements. The application, Appendix 1, provides that other employees working on the line at issue do so on an as-needed basis and are not projected to be adversely affected as a result of the transaction. Delta Southern does not believe it is obligated to enter into an implementing agreement with its employees because they will not be adversely affected, and does not believe it will be responsible for MP employees.

Any authority granted herein will be subject to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), and in *Mendocino Coast Ry.—Lease and Operate—California Western R.R.*, 354 I.C.C. 732 (1978), *modified*, 360 I.C.C. 653 (1980).

Under our consolidation regulations, we must determine initially whether a proposed transaction is major, significant, or minor. The proposed transaction, involving a Class I and a Class III railroad, has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on January 19, 1990.

Decided: January 16, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1308 Filed 1-18-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. Bonifay, Florida et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 5, 1990, a proposed Consent Decree in *United States* v. *City of Bonifay, Florida and the State of Florida*, Civil Action No. 90-50006-RV, was lodged with the United States District Court for the Northern District of Florida. The Complaint filed by the United States sought injunctive relief and the assessment of civil penalties under the Clean Water Act, as amended (the Act), against the City of Bonifay, Florida. The Complaint alleged that the City discharged pollutants from its sewage treatment plant in violation of its National Pollutant Discharge Elimination System (NPDES) permit and the Act.

Under the proposed Consent Decree, the City must pay a civil penalty of $22,600. The Decree requires the City to undertake numerous remedial measures to ensure that it complies with the Act in its operation of its sewage treatment plant.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC., 20044, and should refer to *United States* v. *City Bonifay, Florida, et al.*, D.J. Ref. 90-5-1-1-3207.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Florida, 227 N.

Bronough Street, room 4014, Tallahassee, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, 10th & Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section of the Department of Justice, Land and Natural Resources Division, P.O. Box 7611, Benjamin Franklin Station, Washington, DC., 20044, or in person at the U.S. Department of Justice Building, room 1517, 10th Street and Pennsylvania Avenue, NW., Washington, DC. Any request for a copy of the proposed Consent Decree should be accompanied by a check for copying costs totalling $2.00 ($0.10 per page) payable to "United States Treasurer."

Richard B. Stewart,

Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 90–1256 Filed 1–18–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act in United States v. William K. Martin, et al.

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9622(i), notice is hereby given that on November 20, 1989, a proposed Partial Consent Decree in *United States* v. *William K. Martin, et al.* ("BMF/Petro Products"), was lodged with the United States District Court for the Northern District of Alabama.

The Complaint in this case seeks cost recovery pursuant to section 107 of CERCLA, 42 U.S.C. 9607. The Complaint was filed on March 15, 1989, against William K. Martin ("Martin"), the past owner and operator of the site in question, and several generators who arranged for transportation of waste solvents and other materials to the BMF/Petro Products reclamation facility in Athens, Alabama. The generators named as defendants include: Whittaker Corporation; GTE Communication Systems Corporation ("GTE"); Murray Ohio Manufacturing Co. ("Murray"); Reynolds Metal Co. ("Reynolds"); Dunlop Tire & Rubber Co. ("Dunlop"); and Amana Refrigeration Co. ("Amana").

The site involved in the case is a 20 acre tract of land containing several chicken houses just outside of Athens, Alabama. The site was used by Martin to store hazardous materials from the Petro Products facility beginning in August 1979. In October of 1983, the Environmental Protection Agency ("EPA") conducted an immediate removal of hazardous substances at the site. EPA incurred costs of $302,119.54 in connection with its response actions at the site.

Under the proposed Partial Consent Decree, defendants Whittaker and GTE (the "settling defendants") have agreed to pay $186,300 to the United States in exchange for the United States' covenant not to sue them for recovery of costs incurred in connection with EPA's past response actions at the site. Defendants Murray, Reynolds, Dunlop and Amana previously resolved this lawsuit with the United States by paying $97,903.90 pursuant to another Partial Consent Decree entered by the Court on June 26, 1989. Defendant William K. Martin is not a party to either the present proposed Partial Consent Decree or the Partial Consent Decree that was entered by the Court on June 26, 1989. The Department of Justice is continuing to pursue Martin for the United States' remaining costs associated with the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Partial Consent Decree. The Department of Justice will consider any comments in determining whether or not to consent to the proposed settlement and may withdraw its consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed Consent Decree is inappropriate, improper or inadequate. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *William K. Martin, et al.*, DOJ Ref. No. 90–11–3–324.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Alabama, 200 Federal Building, 1800 5th Ave., Birmingham, Alabama 35203, and the Office of the Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, room 1521, Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. If requesting a copy by mail, please enclose a check in the amount of $1.50 made payable to the "Treasurer of the United States" to cover copying costs.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–1258 Filed 1–18–90; 8:45 am]

BILLING CODE 4410–10–M

Consent Decree in Clear Air Act Enforcement Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Wheeling-Pittsburgh Steel Corporation*, Civil Action No. C–88–216 was lodged with the United States District Court for the Southern District of Ohio on January 8, 1990. The proposed decree resolves violations by Wheeling-Pittsburgh Steel Corporation ("Wheeling-Pittsburgh") of the Clear Air Act and the Ohio State Implementation Plan for particulate and visible emissions from the three steel galvanizing lines at Wheeling-Pittsburgh's Martins Ferry, Ohio facility.

The proposed decree requires Wheeling-Pittsburgh to install new air pollution control equipment at the galvanizing lines and to satisfy various monitoring, maintenance, record keeping and reporting requirements before and after the new control equipment is installed. The proposed decree also orders Wheeling-Pittsburgh to pay a civil penalty of $220,000.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *Wheeling-Pittsburgh Steel Corporation*, 90–5–2–1–1202.

The proposed consent decree can be examined at the Office of the United States Attorney, 85 Marconi Blvd., room 200, Columbus, Ohio and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois. Copies of the 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, room 1521, Ninth Street and Pennsylvania Avenue,

NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $2.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States. The Decree can also be examined at the above address without cost.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-1257 Filed 1-18-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

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"), Bell Communications Research, Inc. ("Bellcore") on December 14, 1989 filed written notifications, on behalf of Bellcore and Toshiba Corporation, (hereinafter known as "Toshiba") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the Parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were 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 joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Toshiba is a Japanese corporation having a place of business at 1–1 Shibaura 1-Chome, Minato-Ku, Tokyo 105 Japan.

Bellcore and Toshiba entered into an agreement effective November 14, 1989 to collaborate on research to better understand the applications for exchange and exchange access services of devices and equipment for asynchronous transfer mode technology, including demonstrating the feasibility of research concepts by means of experimental prototypes and experimental systems of such technology.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 90-1252 Filed 1-18-90; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

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"), Bell Communications Research, Inc. ("Bellcore") on December 14, 1989 filed written notifications, on behalf of Bellcore and Furukawa Electric Co., Ltd. (hereinafter known as "Furukawa") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were 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 joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

Furukawa is a Japanese corporation having a place of business at 6–1, Marunouchi 2-Chome, Chiyoda-Ku, Tokyo 100, Japan.

Bellcore and Furukawa entered into an agreement effective October 30, 1989 to collaborate on research of multi-quantum well lasers and investigate their use in coherent telecommunications systems to better understand the application of this technology for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technology.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 90-1253 Filed 1-18-90; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 Ecolab Incorporated—Iodophors Joint Venture

Notice is hereby given that, on November 2, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Ecolab Incorporated—Iodophors Joint venture ("Joint Venture") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the Joint venture membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the Joint Venture advised that Shepard Bros. has become a member of the Joint Venture.

No other changes have been made in either the membership or Planned activity of the Joint Venture.

On December 15, 1987, the Joint Venture 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 January 15, 1988, 53 FR 1074, as corrected by 53 FR 4232. On May 24, 1988, December 13, 1988, and January 18, 1989, the Joint Venture filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on June 13, 1988 (53 FR 22059), January 12, 1989 (54 FR 1256), and February 21, 1989 (54 FR 7490), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-1254 Filed 1-18-90; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—the Importance of Lubricating Oil in Diesel Particulate Emissions

Notice is hereby given that, on November 16, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the extension of the period of performance of its cooperative research project entitled "The Importance of Lubricating Oil in Diesel Particulate Emissions." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under the specified circumstances.

Specifically, the SwRI advised that the original period of performance of the cooperative research project was to be approximately 24 months. The parties to the cooperative research project have agreed to extend the period of performance and the revised projected completion date for the cooperative research project is now July 1, 1990. Except for the extension of the period of performance no other changes have been made in the membership in the

group research project or in the planned research activities.

On August 21, 1987, SwRI 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 September 18, 1987, 52 FR 35335. On December 22, 1987, May 20, 1988, August 16, 1988, October 3, 1988 and February 2, 1989, SwRI filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on January 19, 1988 (53 FR 1418), June 23, 1988 (53 FR 23704), September 15, 1988 (53 FR 35936), October 27, 1988 (53 FR 43483), and March 1, 1989 (54 FR 8607–8608), respectively.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 90–1255 Filed 1–18–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally aassisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by the applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3504, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume III:

Wage Decision No. CA89–2, Modifications 7 through 11

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice General Wage Determination No. CA89–5 dated January 19, 1990.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF–308. See Regulations part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contracts specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State and page number(s).

Volume I:

Georgia, GA90–35, p. 208g, p. 208h

Volume III:

California, CA90–6, p. 106a–106b

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Georgia, GA89–32 (GA90–32), p. 280a, p. 280b
Georgia, GA89–33 (GA90–33), p. 280c, p. 280d
Georgia, GA89–34 (GA90–34), p. 280e, p. 280f

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in paretheses following the decisions being modified.

Volume I:

Connecticut, CT90–1 (Jan. 5, 1990), p. 63, pp. 64–65, 67
District of Columbia, DC90–1 (Jan. 5, 1990), p. 79, pp. 80, 84, 86
Florida, FL90–35 (Jan. 5, 1990), p. 183, p. 184
Florida, FL90–37 (Jan. 5, 1990), p. 189, p. 191
Florida, FL90–38 (Jan. 5, 1990), p. 193, p. 195
Florida, FL90–39 (Jan. 5, 1990), p. 197, p. 199
Florida, FL90–44 (Jan. 5, 1990), p. 207, 208
Georgia, GA90–32 (Jan. 5, 1990), p. 280a, p. 280b
Georgia, GA90–33 (Jan. 5, 1990), p. 280c, p. 280d
Georgia, GA90–34 (Jan. 5, 1990), p. 280e, p. 280f
Massachusetts, MA90–1 (Jan. 5, 1990), p. 399, pp. 403–404

Volume II:

Kansas, KS90–8 (Jan. 5, 1990), p. 361, pp. 362–368

Volume III:

California, CA90–4 (Jan. 5, 1990), p. 71, pp. 72, 74–75, pp. 79–89, 99
Oregon, OR90–1 (Jan. 5, 1990), p. 309, pp. 310–312, p. 318, pp. 324–325

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12th day of January, 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90–1220 Filed 1–18–90; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 29, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 29, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC, 20213.

Signed at Washington, DC this 8th day of January 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
AFG Industries, Inc. (Workers)	Cinnaminson, NJ	01/08/90	12/22/89	23,778	Flat glass.
Bella Rose Fashions, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,779	Ladies' coats.
Diamond Coat Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,780	Ladies' coats & jackets.
Dynasty Fashions (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,781	Coats & suits.
Fashions by Maria, Inc. (Workers)	Newark, NJ	01/08/90	12/01/89	23,782	Ladies' coats.
Fila Fashions, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,783	Coats & suits.
Five Sons Spts. (ILGWU)	Jersey City, NJ	01/08/90	12/01/89	23,784	Coats & suits.
Franca Fashions (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,785	Coats & suits.
G.F. Office Furniture Systems, Inc. (USWA).	Youngstown, OH	01/08/90	12/18/89	23,786	Furniture.
Giuliem Apparel (Workers)	Jeannette, PA	01/08/90	12/21/89	23,787	Womens' skirts & slacks.
Goodyear Tire & Rubber Co. (URW)	East Gadsden, AL	01/08/90	12/20/89	23,788	Tires, flaps, tubes, etc.
H&P Garment (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,789	Coats & suits.
Howton Mfg. Corp. (ILGWU)	Elizabeth, NJ	01/08/90	12/15/89	23,790	Ladies' sportswear.
JDC Fashions, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,791	Ladies' coats.
J.R. Simplot, Inc. (Company)	Ferndale, WA	01/08/90	12/21/89	23,792	Process vegetables.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Janesville Auto Transport Co. (UAW)	Janesville, WI	01/08/90	12/18/89	23,793	Transportation Services.
Jewel Fashions (ILGWU)	W New York, NJ	01/08/90	12/01/89	23,794	Coats & suits.
Kimble Glass, Inc. (AFGWU)	Vineland, NJ	01/08/90	12/20/90	23,795	Laboratory glassware coffee pots.
Koch Services, Inc. (Workers)	Witchita, KS	01/08/90	12/13/89	23,796	Oil & gas.
Langenberg Hat Co. (Workers)	Marthasville, MO	01/08/90	12/11/89	23,797	Caps.
Lockheed Electronics Co., Inc. (IAM)	Denville, NJ	01/08/90	12/18/89	23,798	Ordnance munitions.
Lockheed Electronics Co., Inc. (IAM)	Plainfield, NJ	01/08/90	12/18/89	23,799	Defense electronics.
Luciana Fashions, Inc. (ILGWU)	Jersey City, NJ	01/08/90	12/01/89	23,800	Ladies' coats.
Marilena Fashions, Inc. (ILGWU)	Jersey City, NJ	01/08/90	12/01/89	23,801	Coats & suits.
Materi Exploration, Inc. (Workers)	Upton, WY	01/08/90	12/07/89	23,802	Oil & gas.
Modern Miss Apparel, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,803	Ladies' coats & suits.
Monroe Auto Equipment Co. (UAW)	Monroe, MI	01/08/90	12/22/89	23,804	Shock absorbers, struts.
Monroe Auto Equipment Co. (UAW)	Paragould, AK	01/08/90	12/22/89	23,805	Shock absorbers, struts.
Monroe Auto Equipment Co. (UAW)	Cozad, NB	01/08/90	12/22/89	23,806	Shock absorbers, struts.
Monroe Auto Equipment Co. (UAW)	Hartwell, GA	01/08/90	12/22/89	23,807	Shock absorbers, struts.
Monroe Auto Equipment Co. (UAW)	Newark, DE	01/08/90	12/22/89	23,808	Shock absorbers, struts.
Monroe Auto Equipment Co. (UAW)	Anderson, SC	01/08/90	12/22/89	23,809	Shock Absorbers, struts.
Nick Angione Fashions, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,810	Coats & suits.
Nico Fashions, Inc. (ILGWU)	Jersey City, NJ	01/08/90	12/01/89	23,811	Coats & suits.
Nicolette Fashions, Inc. (Workers)	W New York, NJ	01/08/90	12/01/89	23,812	Ladies' coats.
Newark Die (UAW)	Springfield, NJ	01/08/90	12/14/89	23,813	Dies for plastic injection products.
Nu-Dor, Inc. (Company)	Lacey, WA	01/08/90	12/15/89	23,814	Doors.
Palermo, Fashions (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,815	Ladies' coats & suits.
Performance Assoc. (Company)	Cincinnati, OH	01/08/90	12/10/89	23,816	Metal cutting lathes packaging equip.
Polk Street Fashions, Inc. (ILGWU)	W New York, NJ	01/08/90	12/01/89	23,817	Ladies' coats & suits.
RBM Mfg. Co., Inc. (ILGWU)	Long Branch NJ	12/26/89	12/08/89	23,818	Ladies' sportswear.
Rivoli Fashions (ILGWU)	Orange, NJ	01/08/90	12/19/89	23,819	Womens' wear.
S&D Coat (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,820	Ladies' coats & suits.
Scott Stitching (Company)	Rochester, NH	01/08/90	12/02/89	23,821	Ladies shoes.
Seacraft Instruments, Inc. (Workers)	Batavia, NY	01/08/90	12/20/89	23,822	Surge suppressor.
Skil Corp. (Workers)	Walnut Ridge, AK	01/08/90	12/18/89	23,823	Wrench tools.
Sterling Plumbing Group (USWA)	Morgantown, WV	01/08/90	12/14/89	23,824	Faucets & brass valve products.
Tailorcraft Coat & Suit Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,825	Coats & suits.
Top Line Fashions, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,826	Coats & suits.
Trani Fashions, Inc. (ILGWU)	Jersey City, NJ	01/08/90	12/01/89	23,827	Womens' coats.
V.L. Modern Coat, Inc. (ILGWU)	W New York, NJ	01/08/90	12/01/89	23,828	Womens' coats.
Verona Fashions, Inc. (ILGWU)	Hoboken, NJ	01/08/90	12/01/89	23,829	Ladies' coats & suits.

[FR Doc. 90–1282 Filed 1–18–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–23,197]

BPS Industries North Babylon, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 31, 1989 in response to a worker petition which was filed on July 31, 1989 on behalf of workers at BPS Industries, North Babylon, New York. The workers produced ladies' jackets and coats.

The investigation revealed that both the BPS Industries, North Babylon, New York and the sole manufacturer the company contracted to, Savannah Retail Contractor, Inc., are out of business. BPS Industries closed on December 31, 1988 and Savannah Retail Contractor, Inc. closed at the end of June 1989 and no further information is available to complete the investigation to make a determination for eligibility under section 221 of the Trade Act of 1974. Since no further information is available to complete the investigation, the investigation has been terminated.

Signed at Washington, DC, this 20th day of September 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–1283 Filed 1–18–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–23,208]

Robert B. Britton Oil Properties, Olney, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 31, 1989 in response to a worker petition received on July 31, 1989 which was filed on behalf of workers at Robert B. Britton Oil Properties, Olney, Illinois.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 24th day of August 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–1286 Filed 1–18–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–23,250]

Cosmo Fashions, Newark, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 14, 1989 in response to a worker petition which was filed on August 14, 1989 on behalf of workers at Cosmo Fashions, Newark, New Jersey. The workers produced women's coats and raincoats.

The investigation revealed that both the Cosmo Fashions and the two manufacturers, Cortland Fashions and Glen Harbor Fashions, for whom the subject firm performed contract work are out of business. Cortland Fashion closed in the third quarter of 1986 and Glen Harbor closed in the fourth quarter of 1988. Cosmo Fashions closed in December 1988, and no further

information is available to complete the investigation to make a determination for eligibility under section 221 of the Trade Act of 1974. Since no further information is available to complete the investigation, the investigation has been terminated.

Signed at Washington, DC this 13th day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-1284 Filed 1-18-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-23,360]

Lasercomb America, Inc., Towaco, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 11, 1989 in response to a worker petition which was filed on behalf of workers at Lasercomb America, Incorporated, Towaco, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 27th day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-1285 Filed 1-18-90; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

Unemployment Insurance Program Letter No. 45-89

This directive transmits to SESAs a UIPL providing the Department of Labor's interpretation of those provisions of Federal law relating to permissible deductions from payments of unemployment compensation. The UIPL does not change previous interpretations of Federal law concerning permissible deductions from compensation payable to a claimant. It does, however, correct an error in UIPL 15-82 which incorrectly stated that spousal support may be deducted from compensation payments consistent with Federal law.

Dated: January 9, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

Date: August 11, 1989.
Expiration date: August 31, 1990.

DIRECTIVE: Unemployment Insurance Program Letter No. 45-89
TO: All State Employment Security Agencies
FROM: Donald J. Kulick, Administrator for Regional Management
SUBJECT: Permissible Deductions from Payments of Unemployment Compensation

1. *Purpose.* To advise State agencies of the Department of Labor's interpretation of those provisions of Federal law relating to . permissible deductions from payments of unemployment compensation to individuals and to correct an error in UIPL 15-82 concerning the deduction of spousal support from payments of unemployment compensation.

2. *References.* Sections 303(a)(1), 303(a)(5), 303(d)(2), 303(e)(2), and 303(g) of the Social Security Act; and sections 3304(a)(4), 3306(f), and 3306(h) of the Federal Unemployment Tax Act; 20 CFR 616.8(e); and UIPL 1-82, UIPL 15-82, UIPL 41-83, UIPL 28-84, UIPL 37-86, UIPL 50-86 and UIPL 25-89.

3. *Background.* In recent years, legislation has been considered in many States which would permit deductions from unemployment compensation which are not authorized by Federal law. In addition, several State court rulings have permitted or required similar deductions. In light of these events, this UIPL is being issued to set forth DOL's interpretations of the Federal laws concerning permissible deductions from payments of unemployment compensation prior to receipt by the claimant. This UIPL does not interpret Federal law concerning the delivery of full payments of compensation to someone other than the claimant where it is impossible or infeasible to make the payment directly to the claimant (e.g., when the claimant is deceased), nor does it interpret Federal law concerning the exemption of compensation from levies after receipt by the claimant.

This UIPL does not change previous interpretations of Federal law concerning permissible deductions from compensation payable to a claimant. It does, however, correct an error in UIPL 15-82 which incorrectly stated that spousal support may be deducted from compensation payments consistent with Federal law. As discussed below, there is no authority in Federal law for this position. In addition, prior to the recent amendment requiring the intercept of child support obligations, several States were advised that Federal law permitted certain support obligations to be withheld from compensation. As will be discussed below, this advice also was in error.

The relevant provisions of Federal law are:

a. Section 3304(a)(4) of the Federal Unemployment Tax Act (FUTA) requiring, as a condition of employers in a State receiving credit against the Federal unemployment tax, that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration * * *."

Section 303(a)(5) of the Social Security Act (SSA) contains the same requirement as a condition for receiving administrative grants.

b. Section 303(a)(1), SSA, requiring that a State law include provisions of "Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployemnt compensation when due."

c. Section 3306(f), FUTA, defines "unemployment fund," in pertinent part, as "a special fund, established under a State law and administered by a State agency, for the payment of compensation * * *. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year * * * no part of the moneys of such fund was expended for any purpose other than the payment of compensation * * *."

d. Section 3306(h), FUTA, defines compensation as "cash benefits payable to individuals with respect to their unemployment."

Since the inception of the unemployment insurance program, DOL and its predecessor agencies have interpreted these provisions as requiring that all unemployment compensation must be paid directly, as a matter of right, to the individual whose unemployment is being compensated, except for some narrowly limited statutory exceptions. Therefore, unemployment compensation may not be levied, attached, or otherwise encumbered to satisfy any public or private debt.

These positions were based on the language of the Federal law provisions cited above, which were interpreted as reflecting the intent and purpose of the unemployment insurance program which is to provide compensation to individuals who are unemployed through no fault of their own for the purpose of maintaining these individuals' purchasing power. To deduct compensation to pay debts, or to otherwise provide for payment to someone other than the claimant personally, would defeat the intent and purpose of the program.

This interpretation is supported by the legislative history of the Social Security Act of 1935 which created the Federal-State unemployment insurance program. The Senate report on S. 1130 stated that unemployment compensation differed from a general relief program in that payments were made as a matter of right, not on the basis of need (S. Rep. No. 628, 74th Cong. 1st Sess. 11 (1935)), and that the States were permitted to draw from the unemployment trust fund solely for unemployment compensation purposes (*Id.* at 15). During the debate on the

passage of the Social Security Act, the original sponsor, Senator Wagner, stated that the "only important requirement [of the Social Security Act's unemployment compensation provisions] is that the State law shall be genuinely protective and that its revenues shall be devoted exclusively to the payment of insurance benefits." 79 CONG. REC. 9284 (June 14, 1934).

Since the enactment of the Social Security Act in 1935, four amendments have been made to the Federal law which affect the payment of unemployment compensation to individuals. In 1981, section 303(e), SSA, was amended to provide that certain child support obligations must be deducted from unemployment compensation and paid over to a State or local child support enforcement agency operating under a plan approved under Title IV.D, SSA. See UIPL 1–82 and UIPL 15–82.

In 1983, new subparagraph (C) was added to section 3304(a)(4), FUTA, and comparable language was added to section 303(a)(5), SSA. These amendments permitted States, under certain circumstances, to make deductions from compensation for the payment of health insurance premiums. See UIPL 41–83 and UIPL 28–84.

In 1985, section 303(d)(2), SSA, was added to give States the option of deducting unrecovered overissuances of food stamp coupons from compensation for purposes of paying these amounts to the State food stamp agency. See UIPL 37–86 (51 RF 29713, 39717).

Finally, in 1986, section 303(g) was added to the Social Security Act with conforming amendments to section 303(a)(5), SSA, and sections 3304(a)(4) and 3306(f), FUTA. These amendments give States the option, under prescribed conditions, of deducting from unemployment compensation an overpayment made to the claimant under an unemployment benefit program of another State or of the United States. See UIPL 50–86 (51 FR 29713, 34273).

These recent amendments confirm DOL's position that deductions may be made only when authorized by Federal law. It is a general rule of statutory construction that Congress does not enact unnecessary statutes. Therefore, these amendments would not have been made had Federal law already included provision for the assignment or other deduction from compensation.

Further, when the amendment authorizing child support intercept was under consideration, the House Committee on the Budget noted in its report that "[u]nder existing law, there is no provision allowing for the withholding of unemployment benefits in cases of outstanding child support obligations." (H.R. Rep. No. 158, 97th Cong., 1st Sess. 260.) Similarly, the optional health insurance assignment, the optional deduction for overissuance of food stamp coupons, and the optional deduction of overpayments made under the unemployment compensation laws of the United States or other States, all required amendment to Federal law to be permitted. In addition, by creating certain procedural or legal requirements for these optional provisions, Congress made it clear that the payment of unemployment compensation to someone other than the claimant personally may be made only under the limited conditions expressly provided for in the applicable Federal statutes.

In a December 16, 1988, decision in a conformity proceeding involving the State of Minnesota, the Secretary of Labor affirmed DOL's position that compensation must be paid as a matter of right to eligible claimants and that deductions may be made from compensation only when authorized or required by Federal law. In that decision, Secretary McLaughlin adopted the Administrative Law Judge's conclusion "that the statutory language is clear and unambiguous, and that the legislative history and historical application of the FUTA and SSA provisions support the limiting of the use of unemployment fund monies to cash benefits for unemployed claimants or to certain other specifically stated expenditures." This decision was transmitted to the States by UIPL 25–89. (Ed. note: UIPL 25–89 was published at 54 FR 22973.)

4. *Interpretation.* Provisions of Federal law relating to the payment of unemployment compensation to individuals are interpreted as follows:

a. *Payment to Claimant.* State law must include provision for the payment to the claimant, as a matter of right, of unemployment compensation to which the claimant has been determined to be entitled, promptly and in the full amount which is due. However, no conflict with Federal law is created when:

(1) Payment of unemployment compensation is made to another governmental agency as specifically required or permitted by Federal law; or

(2) Offset is made, consistent with Federal law; against unemployment compensation due a claimant to recover an overpayment of unemployment compensation the claimant is legally liable to repay.

b. *No Waiver or Levy.* State law must provide that no waiver, assignment, pledge, or encumbrance of any right to unemployment compensation shall be valid; and that unemployment compensation payments shall be exempt from levy, execution, attachment, order for the payment of attorney fees or court costs, or any other remedy for the collection of public or private debts, prior to receipt by the claimant.

5. *Specific Situations in which Deductions May or Must be Made from Unemployment Compensation.* A State law may (or must) include provision for deducting and withholding any sum from compensation payable to an individual only if specifically permitted (or required) by Federal law. These exceptions are limited to the following circumstances:

a. If the claimant is legally liable to repay an overpayment of compensation made from the State's unemployment fund, the amount owed may be deducted from compensation currently payable from such fund under State law. This is permissible because the amount previously overpaid is tantamount to a prepayment of compensation currently due the claimant.

In addition, under 20 CFR 616.8(e), the offset of overpayments of compensation made under the law of a transferring State is required when compensation is payable under a Combined-Wage Claim.

The offset of overpayments of compensation made under the unemployment compensation program of another State is permitted, but only in accordance with section 303(g)(1), SSA. Finally, the offset of overpayments of compensation made under a Federal unemployment compensation program is permitted, but only in accordance with section 303(g), SSA. See UIPL 50–86 (51 FR 29713, 34273).

Deductions to recover overpayments are limited to the offset of the overpayment itself. Offset may not be used to recover any additional interest or penalties due under State law as these additional amounts do not constitute a prepayment of compensation. Further, the offsetting of past due contributions, penalty, interest or costs incurred while the claimant was an employer is not permitted. See the Secretary's decision in the Minnesota conformity proceedings, dated December 16, 1988, and transmitted to the States by UIPL 25–89.

b. If the claimant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamps coupons, the State may, under provisions of State law consistent with section 303(d)(2), SSA, deduct amounts from compensation for the purpose of paying these amounts over to the State food stamp agency. See UIPL 37–86 (51 FR 29713, 29717).

c. If the claimant owes child support obligations (as defined in section 303(e)(1), SSA), a deduction from compensation shall be made in accordance with provision of State law consistent with section 303(e)(2), SSA, for the purpose of paying these amounts over to the appropriate State or local child support enforcement agency. See UIPLs 1–82 and 15–82.

Section 303(e)(2) authorizes only deductions for the payment of "child support obligations" as defined in section 303(e)(1), SSA. See section 303(e)(2)(A)(i), SSA. Section 303(e)(1) provides that "[f]or purposes of this subsection, the term 'child support obligation' only includes obligations which are being enforced pursuant to a plan described in section 454 of this Act [i.e., the SSA] which has been approved by the Secretary of Health and Human Services under part D of title IV of this Act." Although certain spousal support obligations are required to be included in the plan described in section 454, these spousal support obligations are not "child support obligations" and may not, therefore, be deducted under the authority contained in section 303(e)(2). This corrects and supersedes an erroneous statement on page 2 of UIPL 15–82.

Deduction from unemployment compensation to satisfy child support obligations not subject to the plan approved under section 454, SSA, including when such deduction is ordered by a court, is not permitted under the authority of section 303(e)(2) and is therfore prohibited. States may deduct child support obligations from unemployment compensation subject to the plan approved under section 454 only under conditions fully consistent with requirements of section 303(e)(2).

d. If the claimant so elects, a deduction from compensation may be made to pay

health insurance premiums in accordance with the provisions of section 3304(a)(4)(C), FUTA, and the third proviso of section 303(a)(5), SSA. See UIPL 41–83 and UIPL 28–84.

e. If Federal law is amended to permit (or require) any further exceptions, then deduction from compensation may (or shall) be made consistent with such amendment and DOL's interpretation of the amendment.

5. *Action.* State agency administrators are requested to review existing State law provisions and agency practices involving payment of unemployment compensation to ensure that Federal law requirements as set forth in this program letter are met. Prompt action, including corrective legislation, should be taken to assure Federal requirements are met.

6. *Inquiries.* Please direct inquiries to the appropriate Regional Office.

[FR Doc. 90–1287 Filed 1–18–90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before March 5, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force, Directorate of Information Management and Administration (Nl–AFU–88–1). Routine general operations records.

2. Department of the Air Force, Directorate of Information Management and Administration (Nl–AFU–89–23). Dependent dental records.

3. Department of the Air Force, Directorate of Information Management and Administration (Nl–AFU–89–28). Routine records related to information management.

4. Department of the Air Force, Directorate of Information Management and Administration (Nl–AFU–89–33). Research source records.

5. Department of the Army (Nl–AU–90–3). Routine records relating to laundry and dry cleaning activities.

6. Department of the Army (Nl–AU–90–4). Routine records relating to the fielding and transfer of materiel systems and equipment.

7. Department of Education, Bureau of Handicapped Education (Nl–12–89–3). Routine administrative records, 1962–72.

8. Department of the Interior, U.S. Geological Survey (Nl–57–90–2). Department of the Interior Personnel System (DIPS), an automated records system maintained by the Geological Survey, 1977–1984.

9. Department of Labor, Bureau of Labor Statistics (Nl–257–89–3). Administrative and facilitative records of the Office of Survey Processing, 1957–66.

10. Office of Personnel Management (Nl–146–89–2). Application files of the Presidential Management Intern Program.

11. Department of State, Bureau of Economic and Business Affairs (Nl–353–89–3). Routine and facilitative records of the Interdepartmental Committee on Trade Agreements. Policy documentation is scheduled for permanent retention.

12. Tennessee Valley Authority, Governmental and Public Affairs (Nl–142–89–2). Washington Office international travel files.

Dated: January 12, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–1223 Filed 1–18–90; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL CRITICAL MATERIALS COUNCIL

Executive Office of the President

National Commission on Superconductivity (NCOS)

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies. The Commission will meet on February 5th and 6th, 1990, in room 105 (Columbia Suite) of the River Inn Hotel, 924 25th Street NW., Washington, DC., from 9 a.m. till 5 p.m.

The meetings both days will be open to the public.

The meetings will consist of a series of briefings by experts from the United States and around the world.

The proposed agenda is as follows:

(1) Briefings and discussion of the scentific and technical applications position of United States and its competitors.

(2) Briefings and discussion of the role of startup companies and consortia towards bringing the technology to the market place.

(3) Briefings on government policies, legal issues and funding issues.

For further information please call 395–7200.

Perry M. Lindstrom,

Acting Executive Director.

[FR Doc. 90–1424 Filed 1–17–90; 4:23 pm]

BILLING CODE 3130-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (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: Extension.

2. The title of the information collection: 10 CFR part 71—Packaging and Transportation of Radioactive Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.

5. Who will be required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.

6. An estimate of the number of responses: 760.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 87 hours per response plus 18 hours per recordkeeper. The total annual industry burden is estimated to be 72,752 hours.

8. An indication of whether section 3504(h), Public Law 96-511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of type A quantities.

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 may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0008), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492-8132. Dated at Bethesda, Maryland, this ninth day of January 1990.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 90–1264 Filed 1–18–90; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON CATASTROPHIC NUCLEAR ACCIDENTS

Meeting

The Presidential Commission on Catastrophic Nuclear Accidents, pursuant to its authority under subsection 170(1), of Public Law 100–408, the Price-Anderson Amendments Act of 1988, will hold a meeting on February 7, 1990, from 10 a.m.–5 p.m., and on February 8, 1990, from 9 a.m.–5 p.m. at the Bellevue Hotel, 15 E Street NW., Washington, DC 20001. The Commission was created to conduct a comprehensive study of appropriate means of fully compensating victims of a catastrophic nuclear accident and to submit a final report to Congress no later than August 20, 1990.

At the February 7 meeting, Robert Vessey, Director of Disaster Services for the American Red Cross, will discusss that organization's response to natural and man-made disasters, and Elizabeth Rolph and Mark Peterson from the Rand Corporation's Institute for Civil Justice will provide information on their projects on structuring alternative compensation mechanisms and on resolution of mass torts. In addition, Robert Willmore, of the law firm Arent, Fox, Kintner, Plotkin and Kahn, will discuss tort reform.

On February 8, Fred Carter from South Carolina Governor Carroll Campbell's office will discuss that state's reponse to Hurricane Hugo. There may be other speakers and the Commission will also hold a working session.

The public is permitted to attend both meetings, and there will be time during each session for brief statements. Transcripts or minutes of the meeting will be available at the Commission office, 600 E Street NW., Room 660.

For further information, contact Jerome Saltzman at 600 E Street NW., Room 660, Washington, DC 20004, (202) 275–5695. Members of the public planning to attend the Commission meeting should contact Mr. Saltzman at (202) 275–5695 at least two days before the meeting date.

Dated: January 16, 1990.

Jerome Saltzman,

Executive Director, Presidential Commission on Catastrophic Nuclear Accidents.

[FR Doc. 90–1271 Filed 1–18–90; 8:45 am]

BILLING CODE 6820-SP-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Annual Earnings Questionnaire for Annuitants in Last Person Service.

(2) *Form(s) submitted:* G–19L.

(3) *OMB Number:* New collection.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* New collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 7,000.

(9) *Total annual responses:* 7,000.

(10) *Average time per response:* .5 hours.

(11) *Total annual reporting hours:* 3,500.

(12) *Collection description:* Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the beneficiary works for a railroad or earns more than the prescribed amounts. The collection obtains earnings information needed by the Railroad Retirement Board for determining possible reductions in annuities because of LPS earnings.

Additional Information or Comments: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington DC 20503.

Ronald J. Hodapp,

Director of Information, Resources Management.

[FR Doc. 90–1251 Filed 1–18–90; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–27611; File No. 600–24]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Granting Temporary Registration as a Clearing Agency

January 12, 1990.

I. Summary

On July 29, 1988, Delta Government Options Corporation ("Delta") filed with the Securities and Exchange Commission ("Commission") an application under section 19(a) of the Securities Exchange Act of 1934 ("Act") [1] for registration as a clearing agency under section 17A of the Act.[2] Delta proposed to issue, clear, and settle options executed through the Over-the-Counter Options Trading System ("System") operated by RMJ Securities Inc. ("RMJ Securities").[3] On January 12, 1989, pursuant to sections 17A(b)(2) and 19(a) of the Act, the Commission granted Delta temporary registration as a clearing agency for a period of 36 months.[4] Concurrently, the Commission's Division of Market Regulation ("Division") issued a letter to RMJ Securities ("RMJ No-Action letter") stating the Division would not recommend enforcement action against RMJ Securities, subject to certain conditions, if the System did not register as a national securities exchange under sections 5 [5] and 6 [6] of the Act.[7]

The Board of Trade of the City of Chicago ("CBT") and the Chicago Mercantile Exchange ("CME") petitioned the United States Code of Appeals for the Seventh Circuit ("Court") for review of the January 12, 1989 Order and RMJ No-Action Letter.[8] Both challenges were premised on the view that the System is an exchange that has neither obtained registration as a national securities exchange under section 6 of the Act, nor obtained an exemption from such registration under section 5 of the Act.[9]

On August 17, 1989, the Court: (1) Dismissed for want of a reviewable order that portion of the CBT/CME consolidated action challenging the RMJ No-Action Letter, holding that the RMJ No-Action Letter reflected an agency decision not to prosecute and as such was presumptively unreviewable; [10] and (2) vacated, effective January 18, 1990, the January 12, 1989 Order, allowing the Commission to decide by that date whether the System is an exchange.[11] Based upon its exchange determination, the Commission could "re-register Delta or decline to do so." [12]

In vacating the January 12, 1989 Order, the Court held that the Commission must decide that the System is not an exchange to find Delta in compliance with that portion of section 17A(b)(3)(A) of the Act requiring a registered clearing agency to be organized and have the capacity to comply with the Act and rules and regulations thereunder. The Court noted that, in order to find Delta properly registered as a clearing agency, it needed a reasoned Commission decision "analyzing the subject [and] weighing the pros and cons of a particular reading of exchange." [13]

On September 7, 1989, the Commisison solicited comment on Delta's application in light of the Court's decision, inviting commentators to address the entire application as well as the exchange registration issue.[14] The Commission received six letters of comment.[15]

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[1] 15 U.S.C. 78s(a) (1982).

[2] 15 U.S.C. 78q–1 (1982).

[3] In its initial filing, Delta requested, pursuant to section 17A(b)(1) of the Act, several exemptions from the requirements of section 17A. On August 5, 1988, the Commission published in the **Federal Register** notice of Delta's initial filing. See Securities Exchange Act Release No. 25956 (August 1, 1988), 53 FR 29536. Four comments were received, all opposing Delta's application and exemption requests. See Letters from Thomas R. Donovan, President, Chicago Board of Trade ("CBT"), to Jonathan Katz, Secretary, Commission, dated September 9, 1988; Wayne P. Luthringshausen, Chairman of the Board, Options Clearing Corporation ("OCC"), to Jonathan Katz, Secretary, Commission, dated September 9, 1988; Carl A. Royal, General Counsel, Chicago Mercantile Exchange ("CME"), to Jonathan Katz, Secretary, Commission, dated September 12, 1988; and Carrie E. Dwyer, Senior Vice President and General Counsel, American Stock Exchange ("Amex"), to Jonathan Katz, Secretary, Commission, dated September 20, 1988. Subsequently, Delta amended its application, withdrawing many of its exemption requests, and the Commission published notice of the amended application. See Securities Exchange Act Release No. 26172 (October 12, 1988), 53 FR 40816. Four comments were received, all opposing Delta's application in light of its amendments. See Letters from Wayne P. Luthringshausen, Chairman of the Board, OCC, to Jonathan Katz, Secretary, Commission, dated November 2, 1988; Thomas R. Donovan, President, CBT, to Jonathan Katz, Secretary, Commission, dated November 8, 1988; Carl A. Royal, General Counsel, CME, to Jonathan Katz, Secretary, Commission, dated October 28, 1988; and Roger D. Rutz, President, Board of Trade Clearing Corporation, to Jonathan Katz, Secretary, Commission, dated November 18, 1988.

[4] See Securities Exchange Act Release No. 26450 (January 12, 1989), 54 FR 2010 ("January 12, 1989 order").

[5] 15 U.S.C. 78(e) (1982).

[6] 15 U.S.C. 78(f) (1982).

[7] See Letter from Richard G. Ketchum, Director, Division of Market Regulation, to Robert A. McTamaney, Counsel for RMJ Securities, Carter, Ledyard & Milburn, dated January 12, 1989.

[8] See Board of Trade of the City of Chicago and Chicago Mercantile Exchange v. SEC, Nos. 89–1084 and 89–1449 (7th Cir.).

[9] *Id.* On March 13, 1989, the Court granted a CBT/CME request to consolidate the two challenges.

[10] See Heckler v. Chaney, 470 U.S. 831 (1985).

[11] See Board of Trade of the City of Chicago and Chicago Mercantile Exchange v. SEC, 883 F.2d 525 (7th Cir. 1989).

[12] *Id.* at 537.

[13] 883 F.2d at 535

[14] See Securities Exchange Act Release No. 27227 (September 7, 1989), 54 FR 37854.

[15] Letters opposing Delta's application include a joint letter from William Brodsky, President, CME, and Thomas R. Donovan, President, CBT, to Jonathan Katz, Secretary, Commission, dated October 13, 1989 ("CBT/CME Post Litigation Letter"), a letter from Alger B. Chapman, Chairman, Chicago Board Options Exchange ("CBOE"), to Jonathan Katz, Secretary, commission, dated October 26, 1989 ("CBOE Post Litigation Letter"), and a letter from the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, to Richard C. Breeden, Chairman, Commission, dated December 20, 1989 ("Dingle Letter"). Letters favoring Delta's application include a letter from Robert A.

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In this Order, the Commission reconsiders Delta's registration application and the attendant issue of whether the System is an exchange. For the reasons discussed in detail below, the Commission has determined that the System is not an exchange as that term is defined in section 3(a)(1) of the Act. Because the System is not an exchange and is not required to register as such under the Act, the Commission, as discussed below, finds Delta has the capacity to comply with the Act and rules and regulations thereunder in accordance with section 17A(b)(3)(A) of the Act.

This Order also analyzes Delta's ability to comply with the other statutory standards of section 17A of the Act. Except for the exchange issue noted above, the Court did not question the Commission's section 17A analysis and determinations with respect to Delta's application ("other section 17A determinations"). Commentators responding to Delta's application in light of the Court's decision generally did not question the Commission's other section 17A determinations. The CBT/CME Post Litigation Letter and the CBOE Post Litigation Letter, however, incorporate several prior letters by reference.[16]

Issues raised in CBT/CME and CBOE Prior References regarding the Commission's other section 17A determinations were addressed in the January 12, 1989 Order and the Court did not question the Commission's treatment of those issues. Based on its review of Delta operations since issuance of the January 12, 1989 Order and all written comments received regarding Delta's application, and the record in this matter, as discussed below, the Commission finds that Delta is so organized and has the capacity to comply with the Act, including section 17A, and is in compliance with (or exempt from) other requirements and standards described in section 17A. Accordingly, this Order grants Delta temporary registration as a clearing agency for a period of 36 months.[17]

II. Introduction

Delta,[18] together with RMJ Options Trading Corporation ("RMJ Options")[19] and Security Pacific National Trust Company ("SPNTCO"),[20] operate the System. The System is designed to provide brokerage services and a central clearing facility for the over-the-counter ("OTC") trading of options on United States Treasury securities ("Treasury options") pursuant to the Procedures of the Over-the-Counter Options Trading System ("System Procedures").[21]

Delta is the issuer of all options traded through the System. With respect to option trades accepted for clearance in the System, Delta issues in book-entry form a put or call option to the purchasing participant[22] and simultaneously purchases a matching put or call option from the selling participant, thereby ensuring that Delta's short positions are at all times offset by corresponding long positions. Delta undertakes performance of all obligations arising under these issued contracts (*e.g.*, Delta undertakes the settlement of premium obligations and assumes the obligation to sell underlying Treasury securities at the strike price to the buyer of a call option upon the exercise of that option and to purchase underlying Treasury securities at the strike price from the buyer of a put option upon the exercise of that option).[23]

In addition to issuing options and undertaking the performance of obligations to option purchasers and sellers, Delta performs the following functions. First, Delta is responsible for admitting participants to the System. This responsibility entails setting participant admission criteria and determining whether applicants meet that criteria. Second, Delta enforces its rules and procedures. Third, Delta sets participant margin requirements, trading limits, and position limits. Fourth, Delta makes determinations concerning the suspension of participants and directs the liquidation of a suspended participant's positions in accordance with System Procedures. Finally, as described below, Delta maintains a $200 million credit enhancement facility.

A participant trading through the System proceeds in one of two ways. The participant may instruct RMJ Options[24] to effect the trade with the

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McTamaney, Counsel to RMJ Securities, Carter, Ledyard & Milburn, to Jonathan Katz, Secretary, Commission dated October 11, 1989; William J. Lynch, Counsel to Delta, Morgan, Lewis & Bockius, to Jonathan Katz, Secretary, Commission, dated October 12, 1989; and Barbara Lucas, Vice President, Citicorp, to Jonathan Katz, Secretary, Commission, dated October 11, 1989.

[16] CBT/CME incorporate by reference letters from Thomas R. Donovan, President, CBT, to John S.R. Shad, Chairman, Commission, dated August 21, 1985; Thomas R. Donovan, President, CBT, William Brodsky, President, CME, and Charles Henry, Chairman, CBOE, to David Ruder, Chairman, Commission, dated November 6, 1987 ("11/6/87 Letter"); Thomas R. Donovan, President, CBT, William Brodsky, President, CME, and Charles Henry, Chairman, CBOE, to David Ruder, Chairman, Commission, dated February 19, 1988 ("2/19/88 Letter"); Thomas R. Donovan, President, CBT, William Brodsky, President, CME, and Charles Henry, Chairman, CBOE, to David Ruder, Chairman, Commission, dated June 10, 1988 ("6/10/88 Letter"); CBT and CME letters cited at note 3; and Thomas R. Donovan, President, CBT, to Jonathan Katz, Secretary, Commission, dated July 19, 1989. These letters will be referred to collectively as "CBT/CME Prior References." CBOE incorporates by reference letters from Andrew Klein, Counsel, to CBOE, Schiff Hardin & Waite, to John P. Wheller III, Secretary, Commission, dated September 26, 1985, and March 24, 1986; a letter from Walter E. Auch, Chairman, CBOE, to John S.R. Shad, Chairman, Commission, dated May 2, 1986; the 11/6/87 Letter; the 2/19/88 Letter; the 6/10/88 Letter; and a letter form Alger Chapman, Chairman, CBOE, to Jonathan Katz, Secretary, Commission, dated August 7, 1989. These letters will be referred to collectively as "CBOE Prior References".

[17] During the temporary registration period, the Commission will continue to monitor and oversee Delta operations through review of proposed rule changes (See section 19(b) of the Act and Rule 19b–4 thereunder), notices to participants (See Rule 17a–22 under section 17(a) of the Act), and disciplinary actions (See section 19(d) of the Act and Rule 19d–1 thereunder).

[18] Delta was incorporated in January 1988 in the state of Delaware. Delta has a $9 million initial capital base and is owned by: (1) Dots, Inc. (81%), a wholly-owned subsidiary of Cawsl Corp.; and (2) SMG Options Corp. (19%), owned by certain principals of Glickenhaus & Co., a New York Stock Exchange member and registered broker-dealer and investment adviser.

[19] RMJ Options, a registered government securities broker, is a wholly-owned subsidiary of RMJ Securities, an inter-dealer broker of U.S. government and agency securities with offices in New York, London, and Tokyo, which in turn is a wholly-owned subsidiary of RMJ Holdings, Inc.

[20] SPNTCO is a national bank regulated by the Comptroller of the Currency ("Comptroller"). SPNTCO is owned by Security Pacific Corporation, a bank holding company regulated by the Board of Governors of the Federal Reserve System ("FRB").

[21] Options traded in the System are on underlying Treasury bills, bonds, and notes with an aggregate principal amount of $1 million. Terms of these options that are uniform include the expiration date (*i.e.*, the Saturday following the third Friday of the expiration month), the maximum duration of the contract (*i.e.*, for Treasury bonds and notes, the earlier of two years from the date of issuance of the option or one month prior to the maturity or redemption date of the bond or note, and for Treasury bills, 13 calendar days prior to the maturity date of the bill), and the unit of trading (*i.e.*, underlying Treasury securities in the principal amount of $1 million). Terms such as the premium, exercise price, expiration month, and the yield and maturity of the underlying securities are subject to negotiation between System participants.

[22] Each put and call is an uncertificated security under Article 8 of the Uniform Commercial Code as in effect in the state of New York, and ownership thereof is evidenced by a daily position report sent to the purchasing participant.

[23] As of December 12, 1989, 52 transactions have been executed through the System; 344 total contracts are outstanding; 226 total contracts have been closed out by offset; 110 total contracts have been exercised; and 70 total contracts have been allowed to expire. *See* Letter from David Maloy, President, Delta, to Jonathan Kallman, Assistant Director, Division, dated December 12, 1989 ("Update Letter").

[24] RMJ Options provides brokerage services for System participants and disseminates option bid and ask quotations to participants through an automated communications network. RMJ Options owns and maintains all computer software

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contra party on an anonymous or "blind" basis [25] at the price quoted by the *contra* party through the communications network. RMJ Options matches [26] each brokered executed trade and reports matched trades to Delta and SPNTCO.

Alternatively, participants can communicate with a *contra* party based on buy or sell interest disseminated in the System or otherwise, and proceed to negotiate the trade without using the RMJ Options brokerage service as an intermediary. Trades effected through RMJ Options, or between participants without RMJ Options involvement, are reported by RMJ Options or each participant (if the trade is not executed through RMJ Options) to SPNTCO, which matches those trades and reports them to Delta for clearance and settlement.

Under a contract with Delta, SPNTCO acts as clearing bank (facilities manager) for the System. All trades effected between participants are submitted to SPNTCO for acceptance. Under the contract and System Procedures, SPNTCO accepts a trade [27] if both sides of the trade match, the trade does not result in a participant exceeding its trading or position limits, and neither participant has been suspended from the system.[28] Upon acceptance of a transaction for clearance by SPNTCO under Delta's procedures, Delta issues the option underlying the transaction and undertakes the performance of obligations arising under that option.

With respect to issued options, SPNTCO performs recordkeeping and safeguarding functions. SPNTCO maintains books and records necessary for it, on behalf of Delta, to receive premium and margin payments from participants, transmit payments to participants, and facilitate the settlement of exercised options.[29] SPNTCO safekeeps all property and funds delivered to its for the account of Delta, as well as provides for the overnight investment of margin payments. SPNTCO accepts exercise notices on behalf of Delta and distributes exercise assignments to participants. SPNTCO also receives and delivers funds and securities necessary for exercise settlement. Moreover, SPNTCO prepares and distributes to participants daily margin, position, and exercise reports.

III. Statutory Standards

Section 17A of the Act requires a clearing agency, as defined in section 3(a)(23) of the Act and subject to certain exceptions, to register with the Commission.[30] Delta, as issuer and obligor of options traded through the System, falls within the section 3(a)(23) definition of a clearing agency and, therefore, is required to register with the Commission.

Subparagraphs (A) through (I) of section 17A(b)(3) of the Act set forth specific determinations the Commission must make in granting registration. The Commission has published clearing agency registration standards ("Standards") that provide additional guidelines concerning the Division's interpretation of subparagraphs (A) through (I).[31] The Commission also notes that, in adopting the Government Securities Act of 1986 ("GSA"),[32] Congress stated that,

In providing for the applicability of the registration and other requirements of Section 17A of the Securities Exchange Act to clearing agencies for government securities, the Commission has broad authority under Section 17A—as well as under section 23—to take into account the distinctions between membership clearing agencies and proprietary clearing agencies.[33]

Congress further noted that:

The Commission, under the expanded scope of Section 17A, should recognize distinctions between proprietary and membership clearing agencies, and exercise its discretionary authority to interpret and adapt the requirements of Section 17A, where appropriate, to proprietary clearing agencies for government securities.[34]

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supporting the System, and RMJ Securities owns and maintains the computer hardware, data transmission network, and communication interfaces upon which that software was designed to operate. In establishing this automated communications network, RMJ Options: (1) Installs video monitors, controller, keypads, and attendant equipment at a participant's trading location; (2) installs dedicated data communication lines between the RMJ Options brokering location and a participant's trading location; (3) installs dedicated voice communication lines between the RMJ Options brokering location and a participant's trading location; and (4) provides field engineering support services to maintain all equipment at a participant's location.

[25] Transactions in Treasury securities effected through a U.S. government securities broker typically are effected on a blind basis. Screens viewed by customers show securities' maturity dates, coupon rates, issuing agency, the best bid and ask prices quoted by customers for each issue, and the quantities of securities each customer who provides a quote is committed to sell or buy at the quoted price. The screens neither identify the customers whose quotations are displayed nor reveal the depth of the market (*i.e.*, the number and size of other orders waiting to be executed at the displayed price). See U.S. General Accounting Office, U.S. Government Securities; An Examination of Views Expressed About Access to Brokers' Services, GAO/GGD–88–8 (1987) ("GAO Report").

[26] A trade matches if the writing or selling participant and the purchasing participant agree as to: (1) The identity of the other party to the transaction; (2) the type of option; (3) the variable terms of the option; (4) the amount of the premium; (5) the number of options purchased; and (6) the description of each party as either the purchasing, selling, or writing participant.

[27] Delta does not require participants to pay premiums owed on an option as a condition to trade acceptance. A participant makes premium payment on the day after the option has been accepted for clearance.

[28] To estimate the maximum amount of liability to which the System could be exposed, Delta calculates the System's maximum potential exposure (MPSE). To the extent necessary to ensure that MPSE does not exceed its prescribed limit, a participant may be restricted from engaging in opening purchase or opening selling transactions, required to reduce or eliminate existing long or short positions through closing transactions, and required to pay additional margin.

[29] Each business day, a participant's premium and margin settlement obligations are netted to produce a single amount owed to or by the participant. By 11 a.m. (Eastern Standard Time) each business day, a participant is required to wire to SPNTCO in same-day funds any amount owed by that participant, as reflected in daily reports distributed to participants by SPNTCO. By 5 p.m. each day, SPNTCO wires to a participant in same-day funds any such amount owed to the participant by the System. Thus, Delta can delay, until 5 p.m., the payment of premiums or excess margin to participants who may be experiencing financial or operational difficulties in connection with exercise settlements.

[30] The term "clearing agency" is defined, in pertinent part, as "any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities." See 15 U.S.C. 78c(a)(23) (1982).

[31] See Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standards Release"). The Commission notes that the Standards were developed in the context of registration of 10 clearing agencies engaged primarily in clearing domestic corporate debt and equity securities and to a lesser extent municipal securities. The Commission recognizes that some of the Standards may not be appropriate for clearing agencies that provide services for other investment products such as OTC options on Treasury securities. Accordingly, the Commission notes that the Division intends to apply the Standards flexibly and on a case-by-case basis.

[32] See 132 Cong. Rec. S15790 (October 9, 1986). Prior to the enactment of GSA, government securities were treated as exempted securities for purposes of section 17A, and clearing agencies providing services exclusively for government securities transactions were not required to register with the Commission. Enactment of GSA removed the government securities exception from section 17A, requiring clearing agencies providing services for government securities, such as the Government Securities Clearing Corporation, to register with the Commission.

[33] See 132 Cong. Rec. S15798 (October 9, 1986).

[34] *Id.*

IV. Discussion

*A. Delta "is so organized and has the capacity * * * to comply" with the Act and rules thereunder pursuant to section 17A(b)(3)(A) of the act because the RMJ System, of which Delta is a part, is not properly classified as an Exchange*

1. Summary of Comments

In response to the Commission's September 7, 1989, solicitation of public comment on the appropriateness of re-registering Delta as a clearing agency, the Commission received six letters from seven commentators. Three of these seven—Delta, RMJ Securities, and Citicorp—argued that Delta should be re-registered. The other four commentators—CBT, CME, CBOE, and Chairman John D. Dingell—opposed re-registration.[35]

RMJ Securities and Delta argue that Congress intended to encompass within the exchange definition markets such as the New York Stock Exchange and New York Curb Exchange of the 1930s, in which members have a proprietary interest in the exchange and are afforded fair representation in the administration of its affairs, and in which there is a trading "floor" to which orders are routed. These commentators suggest, as further indicia of a traditional exchange, the existence of the concept of "listing," an auction process among members, a limit order book, and automatic execution of trades. They conclude that the RMJ System is not an exchange as defined under section 3(a)(1) of the Act because it lacks these traditional criteria. These commentators argue that Congress could not have intended to give expansive effect to the language of section 3(a)(1) of the Act (see discussion, infra) encompassing "any organization * * * which * * * provides a market place or facilities for bringing together purchasers and sellers of securities" because such a reading would bring "major wire houses, block positioners, and third market operatives" within the ambit of the exchange definition.[36]

Finally, RMJ Securities and Delta argue that subjecting the System to exchange registration would serve no regulatory purpose because RMJ Options, Delta, and SPNTCO are all subject to regulatory oversight by the Commission and by other government agencies. Rather, such registration would, in the view of these commentators, "deter development of innovative trading systems and, therefore, would run counter to the Commission's expressed policy of encouraging such systems." [37] Citicorp individually asserts that compliance by RMJ Securities with the terms of a no-action letter issued to RMJ Securities by the Commission's staff on January 12, 1989, with respect to the non-registration of the RMJ System as a national securities exchange under sections 5 and 6 of the Act,[38] and with any future Commission rules governing the operations of proprietary trading systems [39] is adequate to ensure that participants in the System are afforded the protections of the Act.[40]

The CBT, CME, and CBOE, on the other hand, contend that the RMJ System meets the definition of the term "exchange" set forth in section 3(a)(1) of the Act.[41] Accordingly, they argue that, because the Commission has not exempted the System from registration as a national securities exchange pursuant to section 5 of the Act, the Commission must require the System to register as an exchange under section 6 of the Act. They advance the following arguments to support this thesis.

The CBT, CME, and CBOE argue that any mechanism that affords to prospective buyers and sellers advantages in "finding a market, obtaining a price, and saving time" should be treated as an exchange.[42] Because the RMJ System offers these advantages, they believe that it is an exchange. Moreover, they contend that several functions performed by Delta in the RMJ System—the establishment of criteria to govern admission and discipline of participants, the setting of margin requirements and trading and position limits, and the discretion to terminate trading in the System—are indistinguishable from functions performed by a traditional exchange market and thus dictate that the System be classified as an exchange. They further argue that the characteristics they identify as absent from the RMJ System—a system of specialists with market maker obligations, a trading "floor," and member ownership of the exchange and representation in its administration—are historical rather than fundamental attributes of an exchange.

The CBT, CME, and CBOE also contend that: (1) The existence of a quotation of transaction mechanism in which participants enter two-sided quotations on a regular or continuous basis is not required for the classification of a trading market as an exchange; [43] (2) interpreting section 3(a)(1) of the Act to encompass the RMJ System would not necessitate compelling all OTC market makers to register, absent exemption, as national securities exchanges pursuant to sections 5 and 6 of the Act; [44] and (3) subjecting the RMJ System to the registration requirements of section 6 of the Act would not deprive the Commission of its ability to compel RMJ's institutional participants to adhere to RMJ's trading rules. Finally, from a policy standpoint, the CBT, CME, and CBOE argue that exchange registration is not incompatible with innovation, and that the Commission's failure to compel the System to register as an exchange could spawn a proliferating group of "non-exchange exchanges" that will have unfair

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[35] All of the comment letters are listed in this Order, *supra* note 15. The comment letters submitted by the CBT, CME, and CBOE incorporate by reference prior letters: (1) Responding to two earlier Commission releases, cited *supra* note 3, seeking public comment on the appropriateness of granting Delta's original and amended applications for clearing agency registration; (2) responding to a Commission release [Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429] seeking public comment on proposed Rule 15c2–10 under the Act; (3) requesting that the Commission reconsider the appropriateness of the staff's issuing two no-action letters to RMJ Securities' predecessor owner and operator of the System, Security Pacific National Bank ("SPNB") and (4) suggesting, after the System was sold to RMJ Securities, that those two no-action letters should not apply to the System as operated by RMJ Securities. The comment letter from Chairman Dingell argues that the System constitutes an exchange which should be registered as such under the Act.

[36] References to the comment letters submitted by RMJ Securities and Delta are to the letter from Robert A. McTamaney, Counsel to RMJ Securities, Carter, Ledyard & Milburn, to Jonathan G. Katz, Secretary, Commission, dated October 11, 1989, at 9–24. Delta specifically has endorsed the views expressed by RMJ Securities. See Letter from William J. Lynch, Morgan, Lewis & Bockius, counsel for Delta, to Jonathan G. Katz, Secretary, SEC, dated October 12, 1989, at 2.

[37] *Id.* at 23.

[38] See Letter from Richard G. Ketchum to Robert A. McTamaney, supra note 7.

[39] See proposed Rule 15c2–10, Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, cited supra note 35.

[40] See Letter from Barbara Lucas, Vice President, Citicorp, to Jonathan Katz, Secretary, Commission, dated October 11, 1989, at 2.

[41] All references to the comment letters submitted by the CBT, CME, and CBOE are to the CBT/CME Post-Litigation Letter, *passim.*, to the CBOE Post-Litigation Letter, *passim.*, and to prior letters incorporated by reference in those two letters.

[42] The CBT, CME, and CBOE cite Nicol v. Ames, 173 U.S. 509 (1899), for this proposition. This case interprets the term "exchange" as it is used in a tax statute for purposes of determining whether certain sales transactions occurred on an exchange and are therefore taxable. By contrast, the term "exchange" in the Exchange Act is used to determine whether certain types of entities should be subject to registration with the Commission and all the regulatory requirements concomitant with registration. The CBT, CME, and CBOE offer no explanation why the Commission should consider that the same term, used in two different statutes and for two different purposes, should be given the same meaning.

[43] See textual discussion, *infra.*

[44] *Id.*

advantages in competing with registered exchanges.

2. Discussion

As discussed in detail below, the Commission believes that the definition of an exchange must be read in the context of the statutory scheme established by Congress in enacting the Exchange Act. Within that context, what distinguishes an exchange from brokers, dealers and other statutorily defined entities is its fundamental characteristic of centralizing trading and providing purchasers and sellers, by its design (whether through trading rules, operational procedures of business incentives), buy and sell quotations on a regular or continuous basis so that those purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those price quotations. The means employed may be varied, ranging from a physical floor or trading system (where orders can be centralized and executed) to other means of intermediation (such as a formal market making system or systemic procedures such as a consolidated limit order book or regular single price auction). The bulletin board established by the RMJ System simply does not meet this central characterization.

A. *Current Regulation of the RMJ System and its Component Parts.* Before addressing the issue whether the RMJ System is an exchange within the meaning of section 3(a)(1) of the Act, it is appropriate to consider the framework within which the component parts of the RMJ System operate and are regulated. First, Delta issues various options on Treasury securities. The issuance of those options is covered by a registration statement subject to the full disclosure requirements set forth in the Securities Act of 1933 ("1933 Act").[45] Second, Delta provides various clearing functions associated with the trading of those options. Those clearing functions are subject to the direct and extensive regulation of Delta and its facilities manager, SPTNCO, under section 17A of the Act.[46] Third, RMJ Options provides various so-called blind brokerage services. In that capacity, RMJ Options is subject to regulation as a government securities broker-dealer under the Government Securities Act of 1986 ("GSA").[47] Finally, the System provides a mechanism whereby indications of interest may be displayed by participants, the so-called bulletin board function.[48] This latter function also is subject to regulation as part of the government securities brokerage function of RMJ. As such, RMJ must maintain records of all activity in the System.[49]

[45] *See* sections 5, 6, and 7 of the 1933 Act, 15 U.S.C. 77(e), (f), and (g); January 12, 1989 Order, *supra* note 4, 54 FR 2010, at note 2.

[46] *See* section 17A of the Act; January 12, 1989 Order, *supra* note 4. The Commission emphasizes that, unlike the Commodity Exchange Act, 7 U.S.C. 1 *et seq.*, the securities laws specifically envision the availability of clearing house registration under section 17A separate and apart from exchange regulation. Thus, the CBT and CME mistakenly imply that clearing house functions require Exchange Act registration. See CBT/CME Post-Litigation Letter, *passim*. Moreover, the Commission has separately examined all of the component parts of the RMJ System and believes that those parts are not exchanges within the meaning of section 3(a)(1) of the Act, and are appropriately regulated under existing statutory regimes.

CBT and CME argue the System performs functions commonly performed by an exchange and therefore is required to register as an exchange under section 3(a)(1) of the Act. According to CBT and CME, these functions include: (1) Delta's ability to make participant admission decisions that affect trading in System securities; (2) Delta and RMJ Option's authority to establish trading rules and conventions; (3) Delta's authority to impose trading and position limits; (4) Delta providing a process for the clearance and settlement of System transaction; (5) RMJ Options' ability to disseminate prices and other trading information; (6) RMJ Options' authority to establish transaction fees; (7) Delta and RMJ Options' authority to administer rules and procedures; (8) Delta's authority to discipline System participants; (9) Delta's authority to establish "standardized" options terms; and (10) the authority of Delta, RMJ Options, and SPNTCO to suspend trading in the System.

The functions identified above also commonly are performed by registered clearing agencies, government securities brokers, government securities dealers, and broker-dealers subject to Commission regulation pursuant to applicable statutory frameworks without exchange regulation:

1. *Admission decisions that affect trading.* All registered clearing agencies set and apply criteria for access to their clearing services (*see* Section 17A(b)(3)(B) of the Act, 17 CFR 241; Securities Exchange Act Release No. 16900 [June 17, 1980], 45 FR 41920) and those admission decisions can affect securities trading (*see e.g.*, CBOE Rule 3.4(c)).

2. *Trading Rules and Conventions.* All registered clearing agencies have the authority to establish rules applicable to transactions they clear and settle (*see* Section 17A(b)(3)(F) of the Act; these rules can affect trading in those securities (*see e.g.*, OCC By-laws, Article VI, Section 11). Furthermore, registered government securities brokers routinely establish trading conventions and conditions under which they will conduct business with their customers.

3. *Trading and Position Limits.* Delta's ability to establish trading or position limits are, in effect, limits on Delta's financial exposure from a participant's Delta-related activity and are designed to enhance Delta's ability to monitor the financial responsibility of its participants. Registered clearing agencies are required to safeguard funds and securities, and, as such, must monitor the financial condition of their members, including, the sufficiency of members' margin deposits. Clearing agencies also have the authority to employ appropriate measures (that may affect member trading) if the member's financial condition exposes the clearing agency to undue financial risk or, in particular, the member's margin deposits are inadequate (see section 17A(b)(3)(B), 17(A)(b)(4)(B)). In this regard, Delta's authority to establish position limits is similar to existing authority at other clearing agencies (see, *e.g.*, OCC Rule 305).

4. *Clearance and settlement process.* In the securities industry, it is the function of a registered clearing agency, not an exchange, to provide clearance and settlement facilities. Furthermore, most registered government securities brokers and dealers, as well as registered broker-dealers (such as OCC clearing members), provide customers access to clearing services without being subject to exchange registration.

5. *Dissemination of prices and quotes.* Registered government securities brokers routinely disseminate prices and trading information in connection with their brokerage services (see GAO Report, *supra* note 25, at 16).

6. *Transaction Fees.* Registered clearing agencies and government securities brokers, among others, routinely establish and charge brokerage commissions for transactions effected through their systems.

7. *Rule Administration.* Delta administers rules applicable to transactions it clears and settles, a function routinely performed, and required to be performed under section 17A(b)(3)(A) of the Act, by a registered clearing agency. RMJ Options administers procedures applicable to brokerage services it provides, a function typically performed, as noted above, by a registered government securities broker.

8. *Discipline of Participants.* All registered clearing agencies have the authority to discipline members in accordance with the Act and are, in fact, required to establish such authority in their rules (see section 17A(b)(3)(G) of the Act).

9. *Standardized Options.* The degree of standardization in options traded through the System is limited (*i.e.*, the premium, exercise price, expiration month, and the yield and maturity of the underlying securities are subject to negotiation between System participants). Such standardization is substantially less than that contained in exchange-listed options. *See* discussion, *infra* at 57–38.

10. *Suspension of Operations.* The authority of Delta, RMJ Options, or SPNTCO to suspend operation of the System does not appear to differ from any broker or dealer's ability to suspend access to its automated trading or execution systems.

Thus, the Commission believes that the various System functions noted above are not functions unique to exchanges and are appropriately regulated through regulation of Delta and RMJ Options in their individual capacities.

[47] Government Securities Act of 1986, Pub. L. No. 99–571, 100 Stat. 3208 (1986); January 12, 1989 Order, *supra* note 4, 54 FR 2010, at 2011 note 16.

[48] With respect to the bulletin board function of the System, the Commission notes that it has plenary authority, by virtue of the rulemaking power conferred by section 11A(b)(1) of the Act, to require the registration of securities information processors if it concludes that such registration "is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of [Section 11A of the Act]." 15 U.S.C 78k–1(b)(1). See also S. Rep. No. 865, 93d Cong., 2d Sess. 4–7 (1974).

[49] The regulations adopted by the Department of the Treasury pursuant to the GSA, 17 CFR Parts 400–405, 449–450, incorporating by reference, with some modifications, the provisions of Commission Rules 17a–3, 4, 5, and 11 under the Act (17 CFR 240.17a–3, 4, 5, and 11), require that registered government securities brokers and dealers make and keep current books and records reflecting brokerage activity, and disseminate certain reports to customers of those government securities brokers and dealers and to the Commission. 17 CFR parts 404, 405,

In addition, the antifraud, recordkeeping, and reporting provisions of the federal securities laws provide the Commission additional regulatory authority over proprietary trading systems. Rule 10b–5 under the Act prohibits any person, in connection with the purchase or sale of any security, from using any means or instrumentality of interstate commerce or the mails to, *inter alia*, engage in any "act, practice, or course of business which operates or would operate as a fraud or deceit upon any person . . ." [50] Sections 15(c)(1) and (2) of the Act [51] add to this general prohibition applicable to "any person", specific prohibitions applicable to broker-dealers, notably, the prohibition against the dissemination of fictitious quotations.[52]

B. *The RMJ System is not an Exchange within the meaning of Section 3(a)(1) of the Act.* Section 3(a)(1) of the Act defines the term "exchange" as:

> any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities, or for otherwise performing with respect to securities the functions commonly performed by a stock exchnge as that term is generally understood.

The legislative history of the Exchange Act makes clear that the Commission has broad flexibility in determining what kinds of trading systems should be deemed to constitute "exchanges" in order to avoid adopting an underinclusive or overinclusive interpretation of the term "exchange." On the one hand, an underinclusive approach might deprive investors of important protections associated with Exchange Act registration. One the other hand, an overinclusive approach would place those evolving systems within the "strait jacket" of exchange regulation.[53]

In the recent case *Board of Trade of the City of Chicago and Chicago Mercantile Exchange* v. *SEC*,[54] the Seventh Circuit emphasized the importance of agency discretion when it noted, "administrative agencies are entitles—more, exist—to * * * translate the statute from the books to the economic realm." [55] In order to permit the Commission to apply flexibly the Act's definition of the term "exchange" to innovative trading systems in securities, Congress imbued the Act's definition of the term "exchange" with a certain "plasticity".[56] As the Seventh Circuit stated, "[s]ection 3(a)(1) does not cast the defintion of an exchange in the mold of 1934; it invites reinterpretation as the way the term * * * 'generally understood' evolves."[57]

As more fully explained herein, the Commission believes that the definition of the term "exchange" set forth in section 3(a)(1) of the Act, is properly interpreted to encompass trading markets that, like the exchange markets of the mid–1930s and of today, are designed, whether through trading rules, operational procedures or business incentives, to centralize trading and provide buy and sell quotations on a regular or continuous basis so that purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those price quotations. The means employed may be varied, ranging from a physical floor or trading system (where orders can be centralized and executed) to other means of intermediation (such as a formal market making system or systemic procedures such as a consolidated limit order book or regular single price auction). The definition of the term "exchange" was not intended to encompass markets that, like the RMJ System, serve as bulletin boards for the episodic display, by broker-dealers and institutions, of buying and selling interest.

(i) The Generally Understood Meaning of the Term "Exchange" in the mid-1930s and Today. In the mid-1930s, the predominant markets for the trading of securities in the United States were the organized stock exchanges.[58] Predominant among these were exchanges such as the NYSE and New York Curb Exchange (now the American Stock Exchange ("Amex")), which operated as centralized, continuous auction markets for the trading of listed securities.[59] Those auction markets offered liquidity, continuity, and depth to investors through the services of several categories of member brokers and dealers: (1) commission brokers (who traded primarily for the accounts of public customers); (2) floor brokers (who traded primarily for the accounts of other exchange members); (3) floor traders (who traded primarily for their own accounts); and, most importantly,

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[50] 17 CFR 240.10b–5.

[51] 15 U.S.C. 78*o* (c)(1) and (2).

[52] As a separate matter, the Commission notes that proposed Rule 15c2–10 under the Act, would, if adopted, provide for Commission review of trading systems not operated as facilities of registered national securities exchanges or associations, and thus not subject to Commission regulation as national securities exchanges or associations pursuant to sections 6 or 15A of the Act, respectively. For example, the proposed Rule would require that the sponsor of a trading system file with the Commission, for approval pursuant to public notice and comment procedures, a plan describing the system and its operations. The proposed Rule would further require that, if the plan is approved, the system sponsor, among other things: (1) Make the system's records available to the Commission on a regular basis and on request; (2) permit the Commission to conduct examinations of the system; and (3) supervise the system to ensure compliance with the terms of the plan and the federal securities laws. See Securities Exchange Act Release No. 26708, *supra* note 35. The Commission staff also currently monitors proprietary trading systems, including RMJ, by means of a no-action process in which, at the request of the sponsor of the system, the staff takes a no-action position with respect to the non-registration of that particular system as a national securities exchange pursuant to sections 5 and 6 of the Act. The staff previously has issued no-action letters to 11 proprietary trading systems, including Instinet, a system that permits broker-dealers and institutions to disseminate buy and sell interests in stocks and automatically execute against that interest. [For a complete list of the systems to which the staff has afforded no-action treatment, *see* Securities Exchange Act Release No. 26708 (April 11, 1989), 54 FR 15429, 15430 at note 3.] These no-action positions, by their terms, are subject to compliance by the system sponsor with a number of conditions, notably, the requirements that the sponsor provide the staff with: (1) Quarterly operational data, and (2) notice, at least 30 days in advance, of any material change to the system. Though these general requirements apply to all systems subject to no-action review, the staff also has tailored additional requirements to the specific characteristics of each system. For example, with respect to RMJ, the staff has conditioned the no-action position on the submission of data on the collection of margin payments and the ranges of premiums and strike prices at which particular option contracts have been sold. See Letter from Richard G. Ketchum to Robert A. McTamaney, *supra* note 7 at 10–12.

[53] S. Rep. No. 792, 73d Cong., 2d Sess. 5 (1934).

[54] 883 F.2d 525, 535 (7th Cir. 1989).

[55] *Id.*

[56] *Id.*

[57] *Id. Cf.*, S. Rep. No. 792, 73d Cong., 2d Sess. 5 (1934) ("From the outset, the (C)ommittee has proceeded on the theory that so delicate a mechanism as the modern stock exchange cannot be regulated efficiently under a rigid statutory program. Unless considerable latitute is allowed for administrative discretion, it is impossible to avoid, on the one hand, unworkable 'strait-jacket' regulation and, on the other, loopholes which may be penetrated by slight variations in the method of doing business.")

[58] By December 1934, there were 43 stock exchanges in the United States, of which 24 were registered with the Commission as national securities exchanges, and the remaining 19, temporarily exempted from such registration. See Securities Exchange Act Release Nos. 11 and 18 (September 28, 1934), 12 (September 27, 1934), 20 (September 29, 1934), and 53 (November 30, 1934).

[59] The volume of trading on all U.S. stock exchanges in 1932 was approximately 561 million shares, of which 425 million shares, or 76% of the total, were traded on the NYSE. Senate Committee on Banking and Currency, *Stock Exchange Practices*, S. Rep. No. 1455, 73d Cong., 2d Sess. 8–9 (June 6, 1934). Playing a less important role in the system of stock trading in the U.S. were "call" markets such as those operated by certain regional stock exchanges such as the Baltimore Stock Exchange, in which buyers and sellers gathered at one time and place to match their bids and offers at the best prices obtainable on either side. SEC, 2 *Report of the Special Study of the Securities Markets*, Chapter V, at 6 (1963) (hereinafter, "Special Study").

(4) "specialists".[60] Exchange specialists, trading issues assigned to them [61] at particular floor locations called "posts," performed the dual functions of effecting transactions in securities allocated to them both for their own accounts (as dealers) and for the accounts of others (as brokers).[62] As dealers, the specialists assumed "affirmative" obligations to trade for their own accounts in order to maintain market continuity and depth, and were subject to statutorily imposed "negative" obligations to abstain from trading for their own accounts unless such trading was necessary for the maintenance of a fair and orderly market.[63] As brokers, the specialists were required to execute not only market orders (to buy or sell at the best current market price), but also limit orders (orders to buy or sell at a specific price or better) and "stop" orders (orders requiring the specialist to execute the order when a transaction in the security occurs at or above the "stop" price in the order).[64]

By trading for their own accounts in both favorable and unfavorable markets, the specialists of the mid-1930s offset temporary disparities between buy and sell interest, thus enhancing the continuity and orderliness of the market.[65] Specialists offered two-sided markets in the securities assigned to them, committing their firm's capital in order to provide the "sell" side of a transaction in a rising market, and the "buy" side of a transaction in a falling one. In a study of the NYSE, the Commission, after observing the conduct of specialists during a 19-week period from June 24 to November 2, 1935, concluded that specialists trading for their own accounts "traded against the daily trend more often than with it, and thus, on the whole, did not tend to accentuate price trends but contributed to the continuity and orderliness of the market." [66]

The exchanges of the 1930s were designed, through the interaction of specialists and floor brokers, to accommodate trading by retail investors as well as institutions. Typically, a customer's market order, placed initially with the branch office of a member firm, would be routed by telephone or wire to the trading room of the broker's firm, usually in New York City; there, it would be taken by a floor broker. The floor broker would then carry the order to the specialist's post, where the floor broker would either: (1) Match the order aginst a reciprocal order represented in the crowd or left with the specialist, or (2) leave the order with the specialist, to be recorded in the specialist's "book." When buy and sell orders could not be matched, the specialist would function as dealer, buying or selling a sufficient amount of stock to ensure a continuous, orderly market. Referring to this process, the House Report that accompanies the bill ultimately enacted as the Securities Exchange Act of 1934, states that "[T]he exchanges are public institutions which the public is invited to use for the purchase and sale of securities listed thereon * * * [O]nly the exchanges make it possible for securities to be widely distributed among the investing public." [67]

As in the mid-1930s, the exchange markets of today offer publicly disseminated market information, liquidity, continuity, and depth, as well as limit order protection, to both retail and institutional investors through the specialist function. Two notable changes to the exchange markets since the 1930s have enhanced that liquidity, continuity, and depth. First, the specialist's affirmative obligation to trade for his own account in order to maintain market continuity and depth, rather than being voluntarily undertaken by the specialist, is now imposed by Rule 11b-1(a)(2) under the Act.[68] Accordingly, if, because of an imbalance between supply and demand, an order left with the specialist cannot be executed at a price reasonably close to the price of the preceding sale, the specialist is required to offset that imbalance by buying or selling that security for his own account.[69] Second, in order to enhance efficiency and improve their competitive positions, exchanges have increasingly developed electronic order routing systems that provide machine-assisted or automatic execution of small orders.[70] Examples of such systems are the "DOT" system operated by the NYSE, the "PER" system operated by the Amex, the "PACE" system operated by the Philadelphia Stock Exchange ("Phlx"), the "MAX" system operated by the Midwest Stock Exchange ("MSE"), and the "SCOREX" system operated by the Pacific Stock Exchange ("PSE").[71] Because of the specialists' providing two-sided markets in the securities assigned to them, traditional exchanges such as the NYSE "provide[] a market in which every traded security can be bought or sold at any time during normal trading hours." [72] Put somewhat differently,

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[60] SEC, *Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker*, 1–9, 25–50 (1936) (hereinafter, "Segregation Report"). Also performing an important function on the exchanges of the mid-1930s were the odd-lot brokers and dealers, who filled orders in amounts less than one unit of trading at a fraction above or below the effective round-lot price. *Id.* at 5–8.

[61] Active stocks frequently were assigned to more than one specialist, some stocks having as many as six competing specialists. *Segregation Report*, at 41.

[62] *Segregation Report*, at 86; Bernheim, *The Security Markets: Findings and Recommendations of a Special Staff of the Twentieth Century Fund* 693 (1935), (hereinafter, "Twentieth Century Fund Report").

[63] Section 11(b) of the Act as originally enacted in 1934 imposed the negative obligation on the specialists. That Section provided that, if the rules of an exchange permitted the specialist to trade for his own account, as dealer, those rules must restrict his dealer trading, so far as was practicable, to trading "reasonably necessary to permit him to maintain a fair and orderly market, and/or * * * to act as odd-lot dealer." 15 U.S.C. 78k(b) (1934). The specialist undertook the affirmative obligation to trade for his own account in order to provide market continuity and depth because his maintenance of a stable, orderly market enhanced his ability to compete successfully with other specialists for order flow from the commission brokers. N. Wolfson, R. Phillips and T. Russo, *Regulation of Brokers, Dealers, and Securities Markets* (1977), ¶ 11.04, at 11–16 n.52; *Segregation Report* at 40–41.

[64] Section 11(b) of the Act as originally enacted prohibited any specialist acting in a brokerage capacity from "effect[ing] on an exchange any transaction except upon a market or limited price order." 15 U.S.C. 78k(b) (1934).

[65] *Segregation Study* 41–42.

[66] *Id.*

[67] H.R. Rep. No. 1383, 73d Cong. 2d Sess. 14, 15 (1934).

[68] Rule 11b–1(a)(2) requires that the rules of all national securities exchanges incorporate both the affirmative and negative obligations, define the responsibilities of specialists as brokers, and provide for "effective and systematic" surveillance of specialists. 17 CFR 240.11b–1(a)(2).

[69] See L. Loss, *Fundamentals of Securities Regulation*, § 8A, at 596 (2nd ed. 1988); Vernon, *The Regulation of Stock Exchange Members* 93–94 (1941) ("[I]n crucial periods the specialist forsakes * * * trading 'with the trend' and offers much-needed support, or otherwise acts to stem a sharp, unwarranted rise or decline in stock prices.").

[70] In addition, one exchange—the Cincinnati Stock Exchange ("CSE")—has automated completely the specialist function by linking users electronically through the National Securities Trading System ("NSTS"). The system essentially operates as a consolidated limit order book in which all entered orders must be priced and executions occur based on time and price priority. CSE members denominated "designated dealers" are assigned one or more issues. (Every issue traded through NSTS must have at least one designated dealer.) The designated dealers are subject to affirmative obligations to offset imbalances of supply and demand analogous to those of traditional exchange specialists. Designated dealers also are responsible for the execution of public agency market orders and marketable limit orders of up to 2,099 shares in those issues at the best bid or offer disseminated through the Intermarket Trading System ("ITS"). The designated dealers guarantee that they will execute public agency limit orders when the limit price is penetrated by a transaction on another (usually the primary) market.

[71] For a fuller explanation of the operation of these systems, see Division of Market Regulation, SEC, The October 1987 Market Break 7–1 to 7–50 (February 1988).

[72] *Special Study* at 78.

The sole purpose of a modern [exchange] is to provide the public with an efficient and dependable mechanism through which securities can be bought and sold. This means, ideally, that every buyer and seller should be able to find his opposite number quickly, and at a price reasonably close to the last sale.[73]

(ii) Analysis of the RMJ System as Compared with Exchanges of the Mid-1930s and Today. As more fully explained *supra*, the RMJ System operates, *inter alia*, as an electronic bulletin board offering broker-dealers, commercial banks, and other institutions the opportunity to display to one another expressions of interest to buy and sell options on government securities, and to execute those buy and sell transactions for their own accounts either: (1) On an anonymous basis, through blind brokerage services provided by RMJ Options, or (2) directly with one another, on a fully disclosed basis.[74] Unlike the exchange markets of the mid-1930s and of today, there is no attempt to assure liquidity through rules or trading procedures in the RMJ System.[75] Although the System offers an opportunity for participants, on an episodic basis, to advertise their interest in a particular option series at a particular premium and strike price, there is no formal requirement or expectation that System participants will undertake to maintain a fair and orderly market in the options they trade, by providing both and bid and offer side of a given market irrespective of their actual buying or selling interest.[76]

Thus, an order entered by a participant to purchase or sell a particular option will be executed only if there is a contemporaneous, countervailing offer from another participant to sell or purchase on the other side of the transaction. Otherwise, the order simply may go unexecuted and will be removed from the System.[77] In addition, unlike exchange markets, the RMJ System is not open to the participation of retail investors on an agency basis; rather, it is open only to broker-dealers and large institutions, and permits those broker-dealers and institutions to trade only for their own accounts, and not for the accounts of others. Moreover, because participants in the System are not permitted to provide brokerage services to investors, the System does not offer anything akin to the limit order protection afforded by exchanges through the brokerage services provided by the exchange specialists. Furthermore, the RMJ System offers participants access to a unique blind brokerage function that has no analogue on the traditional exchanges. For these reasons, the Commission does not believe that the System performs the functions commonly performed by a stock exchange.[78]

Finally, although the presence of standardization, in and of itself, is not determinative, the absence of standardization may be indicative of a system that does not have the fundamental characteristics of an exchange market. Without broad standardization along the lines of futures and options exchange contracts, interest in Delta-issued contracts probably will be diffused among a wide variety of option series, with little likelihood of active, two-sided trading developing in any one series. In this connection, the degree of permissible variation in the terms of the options traded through the System greatly exceeds that of standardized options traded on the registered exchanges. The options contracts traded through the System have negotiable and non-negotiable terms. The negotiable terms are: (1) The premium at which the option contract is sold; (2) the exercise (or "strike") price of the options; and (3) the expiration month of the option (subject to the limitation that the maximum term of the option not exceed, in the case of bonds and notes, the earlier of two years from the date of issuance or one month prior to the maturity or redemption date of the bond or note, and, in the case of bills, 13 calendar days prior to the maturity of the bill). The non-negotiable terms are: (1) The

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[73] Statement of NYSE President G. Keith Funston, 40 Harv. Bus. Rev. 7, 8 (1962) cited in Special Study, at 78.

[74] As previously discussed, on January 12, 1989, the staff issued a no-action letter to RMJ Securities with respect to the non-registration of the RMJ System as a national securities exchange pursuant to Sections 5 and 6 of the Act. *Supra* note 7. The staff's no-action position was premised on the fulfillment of a number of conditions, including the provision of quarterly operational data to the staff. The RMJ System has been operating pursuant to those conditions since the week of January 23, 1989.

[75] The CBT, CME, and CBOE assert that, by virtue of a Commission order, dated December 2, 1935, exempting the Wheeling Stock Exchange ("WSE") from exchange registration [*see* Securities Exchange Act Release No. 432 (December 2, 1935)], the Commission has recognized that a trading market may be an exchange notwithstanding the absence of any mechanism for ensuring a continuous, two-sided market and the lack of traditional "floor." See CBT/CME Post-Litigation Letter, at 21–22, CBOE Post-Litigation Letter, at 7–8, citing letter from Alger Chapman, Chairman, CBOE, to Jonathan G. Katz, Secretary, SEC, dated August 7, 1989. To support this contention, the CBT, CME, and CBOE cite a Commission order granting unlisted trading privileges to WSE, in which the Commission states that, on the WSE, "members customarily enter into direct negotiations with one another . . . or may leave completion of the transaction to the secretary if no personal contact is necessary." Securities Exchange Act Release No. 2175, at 3 (July 7, 1939), cited in CBT/CME Post-Litigation Letter at 21–22, and in CBOE Post-Litigation Letter, at 8.

The Commission's Order granting WSE unlisted trading privileges does not make clear whether members of the WSE were required to submit two-sided quotations to the exchange; CBOE's Post-Litigation Letter recognizes this uncertainty when it states that WSE's members "apparently" were not required to do so. CBOE Post-Litigation Letter, at 8. More importantly, because relatively small regional exchanges such as the WSE provided a mechanism for centralized order flow, operated with a trading floor and labelled themselves as exchanges, they properly fall under the "generally understood" language of the statutory definition. See Securities Exchange Act Release No. 2175, at 4, cited in CBOE Post-Litigation Letter, at 8.

[76] The record of the System's operations butteresses this analysis. During the four-month period from August 1 to November 22, 1989, the System received 600 quotations. Of those 600 quotations, only 40 quotations (6.67%) represented bids and asks posted simultaneously by a single participant for the same option. Those quotations were posted on options having a wide variety of strike prices and expiration dates. In no cases did those quotations elicit executions.

Because of the relatively low percentage of two-sided quotations, the lack of any "clustering" of those markets around particular options, and the failure of those markets to elicit executions, the Commission believes that the RMJ System has not evolved into a marketplace in which participants can expect to receive executions, on a regular or continuous basis, on both the buy and sell side of a particular market.

[77] A bid or ask quotation is removed automatically from the screen if it has not been "hit" by the end of the trading day.

[78] In LTV v. UMIC Government Securities, Inc., 523 F. Supp. 819, 834–835 (1981), the U.S. District Court for the Northern District of Texas held that UMIC Government Securities, Inc. ("UMIC"), a government securities dealer that matched prospective buyers and sellers by ascertaining the existence of buying or selling interest for a particular security, and subsequently purchasing or selling, for its own account, sufficient amounts of securities to meet that interest, did not satisfy the definition of the term "exchange." *Id.* The court stated that an exchange was "a place where or means through which buyers and sellers * * * meet to negotiate and consummate purchases." *Id.* at 834. The court's holding that UMIC was not an exchange was premised on its conclusion that UMIC interposed itself between buyers and sellers rather than permitted those buyers and sellers to negotiate directly with one another. *Id.* The CBT and CME argue that the RMJ System is an exchange within the holding of *LTV* because, unlike UMIC, the RMJ System permits participants to trade directly with each other. CBT/CME Post-Litigation Letter, at 28.

The Commission believes that the heavy reliance placed by the CBT and CMT on *LTV* is inappropriate. That decision, by focusing on one distinction between the entity at issue and an exchange, does not address other traditional functions of an exchange as discussed in this Order: The provision, to both investors and market professionals, of a physical floor or trading mechanism which, as a result of trading rules, operational procedures or business incentives, centralizes trading and results in the availability of buy and sell quotations on a regular or continuous basis, thus ensuring a liquid marketplace. The implication of the *LTV* Court's finding that a brokers' broker is not an exchange notwithstanding that it attempts to bring buyers and sellers together, is that the statutory definition cannot be read so broadly as to encompass entities performing solely brokerage and bulletin board functions. This, of course, is precisely how the RMJ System operates.

underlying aggregate principal amount of Treasury securities ($1 million) on which an options contract may be written; and (2) the day during the chosen expiration month on which the options must expire (in all cases, the Saturday following the third Friday of the expiration month).[79] By contrast, exchange-traded options on Treasury bonds and Treasury notes are characterized by a much greater degree of standardization. Those options trade in "series" of options contracts that expire at three-month intervals, up to a maximum of 15 months from the date of the issuance of the option. By contrast, options on Treasury bonds and Treasury notes traded through the System may expire during any month of the year after the date of issuance of those options, up to a maximum of 24 months from the date of issuance, or one month prior to the maturity or redemption date of the underlying bond or note, whichever is earlier. Further, the exercise prices of exchange-traded options are determined by the exchanges themselves; the exercise prices of options traded through the System are determined by the participants in the System. Accordingly, the flexibility provided participants in the System is much more akin to that provided in the traditional OTC government options markets than for standardized Treasury options, futures, or options on futures.

(iii) An Expansive Reading of Section 3(a)(1) is Incongruous with the Statutory Scheme of the Exchange Act. As discussed earlier, section 3(a)(1) also contains the language, "bringing together purchasers and sellers." The Commission therefore must consider whether, notwithstanding the fact that the RMJ System does not possess the indicia of traditional exchanges, it somehow falls within the definition of an exchange. As discussed more fully below, an expansive reading of the "bringing together" language of section 3(a)(1) would not only bring the RMJ System within the definition of "exchange," but would also bring within the ambit of exchange regulation other entities that Congress also did not intend to subject to exchange regulation. This result is simply uncalled-for in light of the conflict with other statutory provisions; moreover, given the fact that the "bringing together" language is followed by the phrase "or otherwise performing * * * the functions commonly performed by a stock exchange as that term is generally understood," it is clear that the definition as a whole focuses upon entities having the characteristics of traditional exchanges. As the preceding discussion indicates, the RMJ System lacks these characteristics. Thus, read in the context of the entire provision, as well as in connection with other central defined terms of the Act, we do not believe the RMJ System is properly classified as an exchange within the meaning of the Act.

Though any statutory analysis must commence with an examination of language of the statute,[80] the Commission is not constrained to apply a particular provision of a statute so expansively as to produce absurd consequences, to produce inconsistencies with other statutory provisions, or to contravene the obvious thrust of the statutory section itself.[81] Hence, the "bringing together" language of the definition of the term "exchange" need not and should not be interpreted to encompass the RMJ System because, for the reasons set forth below, such an application would contravene the structure of the regulatory scheme set forth in sections 3, 6, and 15 of the Act.

The expansive reading of the "bringing together" language of section 3(a)(1) of the Act suggested by the CBT, CME, and CBOE (see discussion, *supra*) would include within the definition of the term "exchange" not only the RMJ System, but both "brokers" and "dealers" as separately defined under the Act. The term "broker" is defined under Section 3(a)(4) of the Act as "any person engaged in the business of effecting transactions in securities for the account of others * * *."[82] The term "dealer" is defined under section 3(a)(5) of the Act as "any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise * * *."[83] A "broker-dealer" firm, which sometimes trades for its own account (as dealer) and sometimes for the account of its customers (as broker) would arguably be included within the compass of the term "exchange" as defined under the first prong of section 3(a)(1) because the broker-dealer uses its facilities to bring together buyers and sellers within the intent of effecting a securities transaction.[84]

Government securities interdealer brokers (so-called "brokers' brokers" or "blind brokers") are an even clearer example of this inconsistency. The secondary market in government securities functions in large part through the interaction of eight government securities brokers and some 49 dealers who have either established an ongoing trading relationship with the Federal Reserve Bank of New York ("FRBNY") ("primary dealers") or who aspire to do so ("aspiring primary dealers"). The blind brokers traditionally have brought buyers and sellers together by disseminating, through CRT display systems installed in dealers' offices, the prices and sizes of orders at which the dealers are willing to trade and the prices and order sizes of the most recently completed transactions.[85] A dealer, having decided to effect a trade at a particular price and order size, instructs the blind broker to execute the trade with the contra party. Trades are executed by the blind broker on an anonymous basis—*i.e.*, without the disclosure to either dealer of the identity of the contra party at the time of the trade. Thus, the two hallmarks of the blind brokerage system are the active participation of the broker in effecting the trade and the anonymous nature of the transaction. Although these blind brokerage activities can be argued to meet the technical definition of an exchange because these activities bring purchasers and sellers together for the purpose of effecting a transaction, Congress gave no indication in enacting the GSA that it intended to subject brokers' brokers to such a radically different regulatory scheme.[86]

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[79] See Delta Registration Statement filed on Form S-1, at 14.

[80] Ernst and Ernst v. Hochfelder, 425 U.S. 185 (1976).

[81] See Marine Bank v. Weaver, 455 U.S. 551 (1982) (though statutory definition of the term "security" was sufficiently broad to encompass a bank certificate of deposit, classification of that instrument as a security made no sense in light of the economic nature and function of the instrument).

[82] Section 3(a)(4) of the Act, 15 U.S.C. 78c(a)(4).

[83] Section 3(a)(5) of the Act, 15 U.S.C. 78c(a)(5).

[84] In this regard, Oliver J. Troster testified before the Senate Committee on Banking and Currency in 1934, that "Congress cannot intend the absurd result that every little over-the-counter dealer's place of business is itself to be an 'exchange' for all purposes of the Act." *Stock Exchange Practices: Hearings on S. Rep. 56 and S. Rep. 97 Before the Senate Committee on Banking and Currency* 73d Cong., 1st Sess. 7072 (1934).

[85] In addition, there is one broker (a so-called "retail broker") who operates a system that permits trading by dealers other than the 49 primary and aspiring primary dealers.

[86] Indeed, in the only instance in the legislative history in which Congress specifically addressed the appropriate framework for regulating the bulletin board function, Congress, distinguishing two such bulletin board systems (Autex and Instinet) from stock exchanges, suggested that those systems were appropriately regulated not as exchanges under section 6 of the Act, but rather as securities information processors under section 11A of the Act. S.Rep. No. 865, 93rd Cong., 2d Sess. 4–7 (1974). The Senate Report that accompanied S. 2519 (the proposed "National Securities Market System Act of 1974") stated that "[A]utomated quotation

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To include both brokers (including blind-brokers) and dealers within the definition of the term "exchange" and thus subject brokers and dealers to the regulatory scheme prescribed by Congress for exchanges, would be inconsistent with the intent of Congress to regulate exchanges in a much different fashion than individual brokers and dealers.[87] With respect to the regulation of exchanges, the Act empowers the Commission to ensure that an exchange enforces compliance by its members and persons associated with its members, with the provisions of the Act, the rules thereunder, and the rules of the exchange itself.[88] Toward that end, an exchange is required to provide that its members are appropriately disciplined by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, suspension, "or any other fitting sanction."[89] Further, an exchange must deal equitably with its members: It is generally required, when it brings a disciplinary action against a member, to bring specific charges, notify the member of and give him an opportunity to defend against those charges, and keep a record.[90] Finally, an exchange is required to submit proposed amendments to its rules to the Commission for approval prior to their adoption.[91]

Commission regulation of registered broker-dealers under sections 15 (a) and (b) of the Act, on the other hand, is not primarily designed to ensure that those broker-dealers enforce their own rules or the provisions of the Act, or to ensure that broker-dealers deal fairly with "members"—indeed, the concept of "membership" has no application with respect to broker-dealers. Rather, the focus of the Commission's regulation of broker-dealers is on the protection of the investors who are the customers of those broker-dealers. Pursuant to sections 15(c)(3) and 17(a) of the Act, the Commission has implemented a regulatory program designed to protect securities investors by providing safeguards with respect to the financial responsibility of all registered broker-dealers. The cornerstones of the Commission's financial responsibility program are the uniform net capital rule, Rule 15c3–1,[92] and the customer protection rule, Rule 15c3–3.[93]

The Commission is also concerned that including the System within an expansive definition of the term "exchange" would force a non-member, for-profit, proprietary trading system into a regulatory scheme for which it is ill-suited, thus ignoring the Congressional and judicial mandate to apply flexibly the definition of the term "exchange" to the economic realm. Exchanges are composed of "members," as defined under section 3(a)(3)(A) of the Act.[94] Further, the regulatory jurisdiction of exchanges, as set forth in section 19(g)(1)(A), extends to only two classes of entities—members and persons associated with members.[95] The term "member" is defined under section 3(a)(3)(A) as either a registered broker or dealer or a natural person associated with a registered broker or dealer.[96] The RMJ System, on the other hand, is designed to be composed of "participants," some of whom do not meet the definition of "member" as set forth in section 3(a)(3)(A).

Four classes of entities are eligible to participate in the System: (1) Brokers and dealers registered with the Commission pursuant to section 15(b) of the Act; (2) government securities brokers and dealers designated by the FRBNY as primary dealers in government securities; (3) commercial banks; and (4) other institutions, including insurance companies. Obviously, the latter three categories do not fit well within the statutory scheme.

Moreover, application of the statutory fair representation standard to proprietary systems would act as a barrier to entry for those systems. Section 6(b)(3) of the Act requires that the rules of an exchange "assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors * * *." The "fair representation" standard set forth in section 6(b)(3) of the Act generally has been viewed as requiring control of the Board of Directors by the membership of the exchange.[97] Delta's Board of Directors, on the other hand, is not controlled by the participants in the System. An advisory committee of participants chosen by Delta's Board may make recommendations to that Board; however, Delta is not bound to follow the committee's recommendations.[98]

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services such as Autex, communication and execution systems such as Instinet, and central processing facilities such as SIAC would all be required to register [as securities information processors] with the SEC. Stock exchanges and the NASD would be exempt from registration * * *." (*emphasis added*). *Id.* at 7.

The CBOE, citing Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985), argues that "Congressional silence * * * cannot override the words of a statute." *Id.* The Commission does not assert that Congressional silence can override the words of a statute. Rather, when Congress enacted the GSA, it added explicit definitions of a "government securities broker" and a "government securities dealer" to the Exchange Act, and required these entities to register with the Commission or file notices with the Commission or another appropriate regulatory authority. Pub. L. 99–571, 100 Stat. 3208. Congress did not have to create a separate definition of "government securities exchanges" in order to regulate their activities, since traditionally blind brokers in non-government securities have been regarded as broker-dealers and regulated by the Commission as such. Both the Commission and the Department of Treasury have developed special provisions in their capital requirements for broker-dealers and government securities broker-dealers that take into account the activities of brokers' brokers.

[87] Indeed, the CBOE admits, at this late stage, that such an overbroad reading of the statute would compel the Commission to subject blind brokers to exchange regulations. CBOE Post-Litigaton Letter, at 5.

[88] Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[89] Section 6(b)(6) of the Act, 15 U.S.C. 78f(b)(6). A determination to impose a final disciplinary sancton is subject to review by the Commission pursuant to sections 19 (d), (e), and (f) of the Act.

[90] Section 6(d)(1) of the Act, 15 U.S.C. 78f(d)(1).

[91] Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1) (1989).

[92] 17 CFR 240.15c3–1 (1989). The uniform net capital rule is designed to ensure that a broker-dealer will have sufficient liquid assets to satisfy its indebtedness, particularly the claims of customers. The rule accomplishes this purpose by requiring a broker-dealer to maintain specified levels of net liquid assets, or net capital, in relaton to either its aggregate indebtedness or its customer receivables.

[93] 17 CFR 240.15c3–3 (1989). The customer protection rule has two parts. The first part requires all registered broker-dealers to maintain physical possession or control of all fully paid and excess margin customer securities. The second part requires all broker-dealers to ensure that customer funds held by them are used to service the financing of customers; to the extent that customer funds are not used for that purpose, they must be deposited in a reserve bank account.

[94] *See* section 6(c)(1) of the Act, 15 U.S.C. 78f(c)(1).

[95] 15 U.S.C. 78s(g)(1)(A).

[96] Section 3(a)(3)(A) provides:

The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 6(f) of this title.

[97] Securities Exchange Act Release No. 21439 (October 31, 1984), 49 FR 44577.

[98] *See* January 12, 1989 Order, *supra* note 4, 54 FR 2010 at 2021.

Accordingly, in order to comply with the fair representation requirement of section 6, the System would be compelled to set up a participant-controlled board of directors. Imposing user board control over issues such as fees might act as a substantial disincentive to the continued operation of for-profit systems such as RMJ.[99]

In summary, employing an expansive interpretation of section 3(a)(1) results in potential conflicts with other central regulatory definitions under the Act as well as adverse effects on innovation and competition. Rather, each system must be analyzed in light of the statutory objectives and the particular facts and circumstances of that system. In conducting such an analysis, the central focus of the Commission's inquiry should be whether the system is designed, whether through trading rules, operational procedures or business incentives, to centralize trading and provide buy and sell quotations on a regular or continuous basis so that purchasers and sellers have a reasonable expectation that they can regularly execute their orders at those price quotations. The means employed may be varied, ranging from a physical floor or trading system (where orders can be centralized and executed) to other means of intermediation (such as a formal market making system or systemic procedures such as a consolidated limit order book or regular single price auction). As discussed earlier, the RMJ System has no such focus. Moreover, the absence of complete options standardization and expectations or regulatory requirements to ensure two-sided quotations make the development of regular or continuous trading unlikely. It is certainly possible that even a system such as the RMJ System might attract a level of buying and selling interest to develop into a continuous or regular auction market.[100] But the Commission today cannot determine that this is likely to occur. Instead, it appears far more likely that the RMJ System will continue to operate as it has to date, as a useful bulletin board that provides greater commercial certainty than the dealer options market. The Act does not require us to paralyze such proprietary systems under the regulatory regime of exchange registration.

3. Conclusion

For the foregoing reasons, Delta "is so organized and has the capacity * * * to comply" with the Act and rules and regulations thereunder pursuant to section 17A(b)(3)(A) of the Act because the RMJ System, of which Delta is a part, is not properly classified as an exchange under section 3(a)(1) of the Act.

B. Capacity To Promote Prompt and Accurate Clearance and Settlement

Section 17A(b)(3)(A) of the Act requires that a clearing agency be organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions for which it is responsible. With Delta's registration, OTC Treasury options, for the first time, are issued, cleared, and settled within an automated facility subject to Commission oversight. This facility is designed to reduce inefficiencies associated with the clearance and settlement of OTC Treasury options.[101] Accordingly, as noted in the January 12, 1989 Order and supplemented by Commission monitoring of Delta operations since issuance of that Order, the Commission believes Delta is organized and System Procedures are designed to promote the prompt and accurate clearance and settlement of System transactions.[102]

C. Capacity To Safeguard Securities and Funds

Delta has the capacity to safeguard securities and funds, as required by the Act.[103] The Commission bases that determination on: (1) A review of System Procedures and the "Operating and Brokerage Services Agreement Relating to the Over-the-Counter Options Trading System" ("Operating Agreement") between Delta, RMJ Options, RMJ Securities, and SPNTCO; (2) representations by Delta's facilities managers (*i.e.*, RMJ Securities, RMJ Options, and SPNTCO) regarding their capacity to safeguard securities and funds in the midst of extreme market volume and volatility; and (3) Commission monitoring of the System since issuance of the January 12, 1989 Order. In the January 12, 1989 Order, the Commission concluded Delta had the capacity to safeguard securities and funds, as required by the Act. The analysis contained in the January 12, 1989 Order regarding Delta's capacity to safeguard securities and funds is adopted in its entirety by this Order.

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[99] On the other hand, the Commission does not view the fair representation requirement encompassed in section 17A of the Act as foreclosing the registration of proprietary, for-profit systems as clearing agencies under that section of the Act. In fact, Congress directed the Commission, in the legislative history of the GSA, to: recognize distinctions between proprietary and membership clearing agencies, and exercise its discretionary authority to interpret and adapt the requirements of section 17A, where appropriate, to proprietary clearing agencies for government securities. Senate Amendments to H.R. 2032, 132 Cong. Rec. S. 15798 (October 9, 1986).

Accordingly, in its January 12, 1989 Order, the Commission found that Delta's establishment of the participants' advisory committee satisfied the requirement, encompassed in section 17A(b)(3)(C) of the Act, that participants be fairly represented in the administration of the affairs of the clearing agency. On the other hand, the Commission found that the establishment of the participants' advisory committee did not meet the requirement, also encompassed in section 17A(b)(3)(C) of the Act, that participants be fairly represented in the selection of the directors of the clearing agency. Accordingly, the Commission granted Delta an exemption from the provision of section 17A(b)(3)(C). The grant of this exemption has not been challenged by any of the commentators and, given the operation of the System in the interim since January 1989, continues to be appropriate. See discussion, *infra* at 63–65.

[100] The CBT, CME, and CBOE ignore this fact in arguing that a failure to require the RMJ System to register as an exchange would create an enormous regulatory gap resulting in a proliferation of "non-exchanges." *See* CBT/CME Post Litigation Letter, at 36–7. No sponsor of a System can avoid exchange registration simply by avoiding particular characteristics of traditional exchange markets such as affirmative market making obligations or a limit order book. Instead, exchange registration will depend on an analysis of all the facts and circumstances relating to a particular system or marketplace. Thus, for example, if an existing market developed a stock trading system and accompanied it with trading rules, procedures or business incentives that resulted or appeared likely to result in a continuous or regular centralized securities market, that system would be required to register as an exchange.

[101] For example, in the absence of a centralized facility, OTC Treasury options are confirmed via a labor-intensive process in which brokers and dealers exchange confirmation slips, stamp slips containing agreed upon terms, and return stamped slips to each other. This process often results in misplaced confirmation slips and uncompared trades. Premium, margin, and exercise settlement obligations for OTC Treasury options generally are not netted but are deposited piecemeal through clearing agent banks over the atuomated payment and book-entry custody system ("FedWire") operated by Federal Reserve banks. This process can contribute to demands on liquidity from the banking system, increased FedWire traffic, and increased transaction costs.

[102] The relevant analysis contained in the January 12, 1989 Order is adopted in its entirety by this Order.

[103] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and that its rules be designed to promote prompt and accurate clearance and settlement of securities for which it is responsible and to safeguard funds and securities in its custody or control or for which it is responsible. The Standards require clearing agencies, such as Delta, that hire facilities managers to perform data or other processing functions to maintain appropriate safeguards to insure the prompt and accurate clearance and settlement of securities transactions. The Standards also require such clearing agencies to assure that their facilities managers will cooperate fully with clearing agency auditors, Commission examiners, independent public accountants, and any other appropriate regulatory agency, to the same extent as a clearing agency which conducts its own processing functions. See Standards Release, *supra* note 31.

1. Facilities Management, Recordkeeping, and Data Processing

Under the Operating Agreement, SPNTCO provides certain clearance and settlement services pursuant to Delta's instructions and in accordance with System Procedures. As noted, those services include: (1) Trade matching and acceptance; (2) participant account maintenance; (3) the collection, transmission, and safeguarding of securities and funds; (4) the preparation and distribution of daily reports; and (5) the collection, assignment, and distribution of exercise notices. SPNTCO represents that its facilities are adequate to perform those services in accordance with System Procedures, even during periods of extreme market volume and volatility.[104]

Under the Operating Agreement, RMJ Options provides the computer software supporting the System, while RMJ Securities provides the computer hardware, data transmission network, and communication interfaces upon which that software is designed to operate. RMJ Options and RMJ Securities represent that the System's computer software and hardware facilities and personnel are adequate to support the System in accordance with System Procedures.[105]

Delta, SPNTCO, RMJ Options, and RMJ Securities are subject to substantial review regarding their ability to perform their respective System functions. First, the internal accounting departments of each entity review the adequacy of their respective systems and controls and report the results of their review to their respective Board of Directors. Second, internal accounting controls related to Delta and the issuance, clearance, and settlement of System transactions are reviewed annually by an independent public accountant in accordance with Division Standards. RMJ Options and RMJ Securities also have independent auditors review their systems of internal accounting controls. Third, each entity is subject to substantial federal regulation.[106]

The Commission monitors closely the arrangements among Delta, SPNTCO, and RMJ Options and Delta's compliance with the requirements of the Act. Based on such monitoring to date, arrangements among Delta, SPNTCO, and RMJ Options, and functions performed pursuant to those arrangements, have been in compliance with the Act.[107] To the extent any actions by entities involved in the System create non-compliance with the Act or impair the Commission's oversight responsibilities, the Commission believes the Act authorizes, and the Commission would promptly take, appropriate action.

2. Internal Accounting Controls

The Standards require a clearing agency to furnish annually to participants an opinion report prepared by its independent public accountant based on a study and evaluation of the clearing agency's system of internal accounting controls for the period since the last such report.[108] The scope of the study and evaluation includes all clearing agency activities performed for participants, particularly trade recording, transaction processing, and depository activities.[109] Delta's internal accounting controls are subject to annual independent accountant review in accordance with the Standards.[110] Furthermore, Delta's independent auditor consults with SPNTCO auditors in reviewing internal accounting controls applicable to services provided by SPNTCO.

3. Financial Risk Management

System Procedures are designed to protect System participants and Delta against financial loss associated with System services. The principal source of financial risk to Delta and System participants is that participants may default on their obligations to Delta, for example, because of financial insolvency. As described below, Delta safeguards against these risks include participation standards, monitoring member financial condition, trading and position limits, MPSE limits, daily margin requirements, a credit enhancement facility, and specific procedures for handling the obligations of a defaulting member.[111]

An Executive Committee of Delta's Board of Directors determines whether an entity should be admitted as a System participant based upon criteria described in System Procedures.[112] Once admitted, participants must continue to meet these requirements and must submit to Delta annual audited financial statements and quarterly unaudited financial statements. If a participant

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[104] See Letter from Tom Ford, SPNTCO, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1988. SPNTCO has provided efficient facilities management services for Delta since issuance of the January 12, 1989 Order, including during periods of increased volatility such as that experienced during October 1989.

[105] See Letter from Stephen K. Lynner, Managing Director, RMJ Options, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1988. RMJ Securities maintains in New York City a primary data center as well as a back-up data center that provides short and long-term disaster recovery capabilities. Both facilities utilize 24-hour guard service, continuous videotape surveillance, and alarm service at all points of entry. Both facilities also employ uninterruptable power supplies and extensive fire prevention measures. RMJ Options and RMJ Securities have provided efficient services for Delta since issuance of the January 12, 1989 Order, including during periods of increased volatility such as that experienced during October 1989.

[106] Delta, as a registered clearing agency, is subject to Commission oversight as described in section 17A of the Act and rules thereunder. RMJ Options and RMJ Securities, as registered government securities brokers under the Act, are required to file annually with the Commission audited financial statements prepared by an independent public accountant and are subject to periodic Commission examinations. SPNTCO, as a National Bank and member of the Federal Reserve System, is regulated and examined by the Comptroller and FRB.

[107] On May 17, 1989, a data entry error at SPNTCO resulted in an incorrect margin calculation for two System participants. Delta corrected that error promptly and kept the Commission updated throughout that correction process. In response to Division questions regarding that error, Delta represents that it has developed procedures designed to prevent recurrence and coordinate prompt correction of errors that do occur. *See* Letter from David Maloy, President, Delta, to Brandon Becker, Associate Director, Division, dated June 26, 1989.

[108] The Standards propose the annual "for-the-period" requirement to provide a very high degree of assurance to participants and the Commission concerning the safety of overall clearing agency operation. See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 ["Full Registration Order"].

[109] To opine with respect to a clearing agency's system of internal accounting control, the independent accountant is required to comply with general standards established by the American Institute of Certified Public Accountants ("AICPA"). Under AICPA Statement on Auditing Standards ("SAS") No. 30, the independent accountant's report must among other things, describe any material weaknesses in the clearing agency's system of internal accounting controls and any corrective action taken or proposed to be taken. SAS No. 30 also advises the independent accountant to consider issuing a qualified opinion if the entity being reviewed has placed any significant limitations on the scope of the accountant's review.

[110] Delta has informed the Commission that it has engaged KPMG Peat Marwick to conduct its independent audit of internal accounting controls. That audit will be a for-the-period review conducted as of December 31 each year beginning in 1989. The Commission expects to receive a report of that audit by February 28 of each year beginning in 1990. See Letter from David Maloy, President, Delta, to Jonathan Kallman, Assistant Director, Division, dated December 6, 1989.

[111] The Commission notes that Delta's clearing system does not include a clearing fund as contemplated by the Standards Release. The Commission also notes that Delta represents the first Commission-approved clearing system that does not mutualize risk among clearing agency participants. Although other clearing agencies registered with the Commission employ some form of risk mutualization, the Commission does not believe that risk mutualization is mandated by the provisions of the Act. The Commission will examine each clearing agency applicant on a case-by-case basis to determine whether its risk management procedures are appropriately tailored to the markets served by the clearing agency and otherwise satisfy the requirements of the Act.

[112] Delta currently has 21 participants.

fails to meet these requirements, Delta may censure, suspend, or expel the participant, as well as limit the activities, functions, or operations of the participant.

Delta also may impose trading and position limits on participants. Trading limits are imposed on each participant upon admission to the System and are based upon the financial capacity of the participant as determined by Delta credit analysts. Limits on a participant's aggregate long or short positions may be imposed if the condition of the market or financial or operational condition of a participant makes such necessary or advisable for the protection of Delta or System participants. Neither Delta nor SPNTCO accept trades exceeding a participant's trading or position limits.

System participants are required to deposit margin daily to secure obligations arising under Treasury options written by them.[113] The amount of margin required is derived from "mark-to-market" [114] and "performance" margin calculations.[115] Delta monitors intra-day exposure and, under System Procedures, could require participants to deposit additional margin at any time during the business day if it deems such action necessary or advisable for the protection of Delta or System participants.[116]

As discussed below, Delta maintains a $200 million credit enhancement facility provided by SPNB and Capital Markets Assurance Corporation ("CapMAC") designed to ensure Delta can satisfy its obligations if margin deposits are insufficient to cover a default.[117] SPNB has issued, for the benefit of Delta, a letter of credit in the amount of $100 million. If a participant defaults, and Delta's default procedures do not produce funds sufficient to cover that participant's obligations, Delta draws on the letter of credit to cover those obligations. If the letter of credit amount is insufficient to cover a participant default, Delta could draw on a $100 million surety bond issued by CapMAC.[118] Delta may suspend summarily any participant that defaults on its System obligations. Upon suspension, a participant would no longer be permitted to trade through the System, and Delta would place all margin and other property deposited by such participant in a liquidating settlement account ("LSA"). Pending transactions of a suspended participant (*i.e.*, transactions where acceptance by SPNTCO is pending at the time of suspension) would be rejected by SPNTCO, and Delta would close out that participant's long positions, short positions, and exercised options. Proceeds from the closing of all long positions and exercised options would be credited to the LSA, while expenses incurred in closing short positions and exercised options would be charged to the LSA. If the cost of liquidating a suspended participant's positions exceeds the amount available in the LSA, Delta would make a draw on the credit enhancement facility in the manner described.

4. Standard of Care

The Commission believes clearing agencies should perform their functions under a high standard of care, and at a minimum perform custody functions under an ordinary negligence standard of care.[119] Delta and its facilities managers perform their System functions under an ordinary negligence standard of care, with Delta assuming liability for a breach of that standard by any of those entities.[120] Delta would be able to seek indemnification or contribution from its facilities managers for their role in a standard of care breach.[121]

The Standards Release provides that the rules of the clearing agency, subject to several exceptions, must require the clearing agency to promptly deliver securities in its custody or control to, or as directed by, the participant for whom they are held.[122] The Standards except from that requirement securities delivered against payment (for which the participant has not made payment) and securities pledged by the participant through the clearing agency. The Standards Release also requires that a clearing agency's rules and agreements enable broker-dealers to comply with applicable provisions of the Act and related Commission rules concerning protection of customer assets, such as sections 8 and 15 of the Act [123] and Rules 8c–1, 15c2–1, and 15c3–3 under the Act.[124]

In this regard, the Commission notes the System is designed for proprietary activity and Delta maintains liens over all Delta-issued options. Thus, Delta's procedures do not provide for lien-free accounts to enable participants to comply with the Commission's customer protection rules. Delta's rules accordingly prohibit its participants from using the System to establish or maintain customer positions in Delta-issued options.

[113] As of December 12, 1989, Delta has $8,182,266.37 total margin on deposit. See Update Letter, *supra* note 23.

[114] Mark-to-market margin represents an estimate of current options prices, based upon current implied volatilities of options traded within the System, and the resulting current estimated cost to liquidate a participant's options portfolio (*i.e.*, short positions offset by the estimated proceeds from liquidation of its long postions).

[115] Performance margin represents the difference between today's mark-to-market values and the estimated liquidation value of the participant's positions the next business day using predicted market movement for the next business day based on historical volatilities. In estimating the next-day liquidation value of a participant's positions, Delta assumes a three standard deviation overnight move up and down in the value of the Treasury securities underlying those positions, providing, according to Delta, a 99.1% confidence interval. Delta reprices options based upon the mark-to-market values and the three standard deviation move in the market. The worst case change in the value of a participant's positions resulting from these calculations is the perforance margin requirement.

[116] To date, Delta has not experienced any instances of extreme market volatility and has not deemed it necessary to collect intra-day variation margin from participants. *See* Update Letter, *supra* note 23. Delta has experienced periods of increased (although not extreme) volatility in recent months. According to Delta, during that time, participants have had nominal exposure and have operated well within their trading limits.

[117] The amount available to be paid to Delta pursuant to the credit enhancement facility is at all times equal to at least three times MPSE. MPSE equals (1) the exposure of all participant short positions adjusted to reflect a six standard deviation move in the price of Treasury securities underlying those positions, less the sum of (2) the value of all participant long positions adjusted to reflect the same movement, the amount of margin on deposit from all participants, and the amount of margin due from all participants at or before the immediately succeeding settlement time. At the close of each business day, MPSE is calculated for the entire System and for each participant. To ensure that the credit enhancement facility exceeds at least three times MPSE, Delta can impose position limits on participants.

[118] Each participant must be accepted by SPNB as an account party on the letter of credit and must be accepted by CapMAC as an insured party under the surety bond. Furthermore, each participant must reimburse SPNB and CapMAC for any draws made on the letter of credit or surety bond because of that participant's default. SPNB would bear the risk of loss for all unreimbursed draws under the letter of credit up to $50 million. Loss from unreimbursed draws under the letter of credit in excess of $50 million would be borne by both SPNB and Delta, and all unreimbursed draws under the surety bond would be borne by both CapMAC and Delta. The analysis contained in the January 12, 1989 Order regarding the role of SPNB and CapMAC is adopted in its entirety by this Order.

[119] See Standards Release; Full Registration Order; Securities Exchange Act Release Nos. 24046 (February 2, 1987), 52 FR 4218; 25740 (May 24, 1988), 53 FR 19839; and 26154 (October 3, 1988), 53 FR 39556. The Commission also believes a lower standard of care may be appropriate for certain non-custodial functions that, consistent with minimizing risk mutualization, a clearing agency, its Board of Directors, and its members determine to allocate to individual service users. See Securities Exchange Act Release Nos. 25740 (May 24, 1988), 53 FR 19839; and 26154 (October 3, 1988), 53 FR 39556.

[120] See section 1501(b) of the System Procedures.

[121] See section 6 of the Operating Agreement.

[122] See Standards Release, *supra* note 31.

[123] 15 U.S.C. 78(h) (1982) and 15 U.S.C. 78(o) (1982), respectively.

[124] 17 CFR 240.8c–1 (1989), 17 CFR 240.15c2–1 (1989), and 17 CFR 240.15c3–3 (1989), respectively.

The Commission believes that the proprietary nature of the System and Delta's rules that prohibit customer-related activity indicate that those provisions of the Standards Release concerning customer protection procedures should not be applied to Delta. The Commission, however, emphasizes that Delta is obligated by the Act to enforce all of its rules, including the rule requiring System users to limit their activity to proprietary trading.

D. Other Determinations

Other determinations the Commission must make regarding Delta's application are articulated below. The Commission made substantially these same determinations is its January 12, 1989 Order. Except for the exchange registration discussion contained in this section of the January 12, 1989 Order, the analysis contained in the January 12, 1989 Order regarding these other determinations is adopted in its entirety by this Order.

1. Capacity to Enforce Participant Compliance With System Procedures

Section 17A(b)(3)(A) of the Act requires Delta to have the capacity to enforce participant compliance with System Procedures. System Procedures must provide Delta with the authority and ability to discipline participants via appropriate sanctions [125] and must provide fair procedures for the imposition of such sanctions.[126] As discussed below, System Procedures contain appropriate sanctions and provide Delta the authority to impose such sanctions in an equitable manner.

Delta may fine, suspend, or limit the activities of any participant for violations of System Procedures. Prior to the imposition of such sanctions, Delta would furnish the affected participant with written notice of charges and would give that participant an opportunity to have its claim heard before an Executive Committee of Delta's Board of Directors.[127] All Executive Committee decisions would be in writing and would be appealable to Delta's Board of Directors, who could affirm, reverse, or modify the decision.[128] Under section 19(d)(2) of the Act, a disciplined participant could appeal a final decision of the Executive Committee or Delta's Board of Directors to the Commission, which could affirm or reverse that decision pursuant to section 19(f) of the Act.

2. Fair Representation

Section 17A(b)(3)(C) of the Act requires that a clearing agency's rules assure fair representation to its participants and shareholders in the selection of its directors and administration of its affairs. The Act does not define the term fair representation or establish particular standards of representation. Instead, it provides that the Commission must determine on a case-by-case basis whether the rules of the clearing agency regarding the manner in which decisions are made provide fair representation to participants and shareholders.[129] In connection with its January 12, 1989 Order, the Commission granted Delta a partial exemption from section 17A(b)(3)(C).[130]

The Commission continues to believe Delta's governance procedures provide fair representation to participants in the administration of Delta's affairs. According to the Standards Release, that aspect of the fair representation requirement can be satisfied when a clearing agency has a participant advisory committee that has a meaningful opportunity to influence decisions made by the clearing agency's Board of Directors.[131] Under System Procedures, a committee of 5 to 15 participants ("Participants' Committee") advise Delta's Board of Directors on matters pertaining to the operation of the System.[132]

Because Delta's Board is selected solely by Delta shareholders with no input from System participants,[133] Delta governance procedures are not consistent with that portion of section 17A(b)(3)(C) requiring fair representation of participants in the selection of a clearing agency's directors. Accordingly, Delta has requested an exemption from that requirement. In adopting GSA, Congress cited section 17A(b)(3)(C) as a requirement in which the Commission should recognize distinctions between proprietary and membership clearing agencies and should exercise its discretionary authority to interpret and adapt that requirement, where appropriate, to proprietary clearing agencies.[134]

The Commission believes that it is appropriate to grant Delta an exemption from section 17A(b)(3)(C). Unlike other registered clearing agencies, Delta does not serve as the sole or central clearing facility for any particular market or identifiable group of market participants. Similarly, Delta does not mutualize among participants, through a clearing fund or through direct assessments, risks of loss associated with participant defaults or System losses. In the market for OTC Treasury options, Delta, RMJ Options, and SPNTCO represent one of numerous trading and clearing systems alternatives. Moreover, securities options and futures exhanges and clearinghouses also are available to market participants that trade in derivative products overlying Treasury securities. For those reasons, the Commission believes that an exemption from section 17A(b)(3)(C) is appropriate at this time. Before granting Delta full registration as a clearing agency, however, the Commission plans to re-evaluate Delta's governance structure in light of the System's operating history. If at the end of the temporary registration period the Commission believes changed circumstances indicate that Delta should no longer receive a partial exemption from section 17A(b)(3)(C), the Commission will modify or terminate that exemption.

3. Competition

Section 17A of the Act directs the Commission to have due regard for the maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A(b)(3)(I) provides that a clearing agency's rules may not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act. Systems Procedures and Delta's registration as a clearing agency do not impose any inappropriate burdens on competition and indeed promote increased competition.[135]

[125] See section 17A(b)(3)(G) of the Act.

[126] See section 17A(b)(3)(H) of the Act.

[127] Participants subject to summary suspension would receive notice of that suspension after it has been imposed but would be able to appeal that suspension to the Executive Committee.

[128] Any decision by the Executive Committee to affirm a summary suspension would be appealable to the Board of Directors as of right, but any Executive Committee decision not involving summary suspension would be appealable only at the discretion of the Board of Directors.

[129] See Standards Release and Full Registration Order, *supra* notes 31 and 106, respectively.

[130] See January 12, 1989 Order, *supra* note 4, 54 FR at 2022.

[131] See Standards Release, *supra* note 31.

[132] The Participants' Committee is selected by Delta's Board of Directors and acts in an advisory capacity only (*i.e.*, Delta is not bound by an advice or recommendation of the Participants' Committee).

[133] The number of director is fixed from time to time by the Board at no less than one nor more than thirteen. Directors are elected by Delta shareholders at their annual meeting to serve one-year terms.

[134] See 132 Cong. Rec. S15798 (October 9, 1987).

[135] The Commission believes that Delta, in conjunction with its facilities managers, can make efficient, automated processing available to a wider universe of institutions by decreasing the need for each institution to develop its own in-house processing systems, hire personnel, or incur other expenses associated with transaction processing.

Continued

4. Fees

Section 17A(b)(3) of the Act requires a clearing agency's rules to allocate equitably among participants reasonable fees, dues, and other charges. That Section also provides that clearing agency rules not impose any schedule or prices or fix rates for services rendered by participants. The Commission believes System Procedures and fees are consistent with these provision.[136]

V. Conclusions and Determinations

The Commission has reviewed Delta's application pursuant to the Court's mandate. Specifically, the Commission has addressed the exchange registration issue highlighted by the Court and articulated reasons for its determination on that issue. Furthermore, the Commission has reviewed Delta's application with regard to other statutory determinations the Commission must make under the Act, determines the Court and post-litigation commenters did not question.

Pursuant to such review, the Commission has determined that the System is not an exchange and is not required to register as such under the Act. Consistent with that determination, the Commission finds Delta has the capacity to comply with the Act and rules and regulations thereunder, as required by section 17A(b)(3)(A) of the Act.

The Commission also determined that Delta is organized and has the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions; safeguard securities and funds in its custody or control for which it is responsible; enforce compliance by its participants with System Procedures; and carry out the purposes of section 17A of the Act.

Futhermore, the Commission has determined that System Procedures are designed to promote prompt and accurate clearance and settlement of securities transactions; assure the safeguarding of securities and funds that are in the custody or control of Delta or for which it is responsible; foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; prevent unfair discrimination in the admission of participants or among participants in the use of Delta; and, in general, protect investors and the public interest.

In addition, the Commission has determined that Systems Procedures provide for the equitable allocation of reasonable dues, fees, and other charges among participants; do not impose any schedule of prices, or fix rates or other fees for services rendered by participants; provide for appropriate discipline or participants for a violation of any provision of System Procedures by expulsion, suspension, limitation of activities, fines, censure, or any other fitting sanction. They also provide a fair procedure with respect to the disciplining of participants, the denial of participation to applicants, and the prohibition or limitation by Delta of any person with respect to access to System services; and do not impose any burden on competion not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has granted Delta a partial exemption from section 17A(b)(3)(C) of the Act. The Commission finds that granting the above exemption request is consistent with the public interest, the protection of investors, and the purposes of section 17A, including the prompt and accurate clearance and settlement of securities transactions as well as the safeguarding of securities and funds.

It is therefore ordered, pursuant to sections 17A(b)(2) and 19(a) of the Act, that Delta's registration be and it hereby is granted for a period of 36 months from the date of this Order, and that Delta be granted the exemption described above subject to the terms, exemption, and other qualifications contained in this Order.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1177 Filed 1-18-90; 8:45 am]

BILLING CODE 8010-01-M

With these efficiencies, dealers and other investors may be more inclined to trade OTC Treasury options as an alternative method to hedge portfolio risk or discover price movements in the market. Moreover, Delta undertaking the performance of System options may permit fuller participation of some relatively smaller dealers in the OTC government securities options market. Consistent with section 17A(b)(3)(B), System Procedures provide that a wide variety of financial institutions may apply for System participation provided they satisfy applicable financial responsibility standards as contemplated by section 17A(b)(4)(B).

[136] System participants are charged transaction-based fees for both the use of the brokerage service provided by RMJ Options and the use of the clearing service arranged by Delta through SPNTCO. Each party to a transaction brokered by RMJ Options on a blind basis is charged both a brokerage commission and a clearing fee. Each party to a transaction effected on a fully disclosed basis, without the use of RMJ Options brokerage services, is charged by Delta a clearing fee only. Brokerage commissions and clearing fees assessed against participants are collected by Delta. Delta is required to file changes to its fees with the Commission pursuant to section 19(b) of the Act and Rule 19b-4 thereunder.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 12, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Arkla Exploration Company
Common Stock, $1.00 Par Value (File No. 5672)
Leo's Industries, Inc.
Common Stock, $.001 Par Value (File No. 5673)
Western Gas Resources, Inc.
Common Stock, $.10 Par Value (File No. 5674)
Air & Water Technologies
Class A Common Stock, $.001 Par Value (File No. 5675)
BHC Communications, Inc.
Class A Common Stock, $.01 Par Value (File No. 5676)
Jacobs Engineering Group, Inc.
Common Stock, $1.00 Par Value (File No. 5677)
Quest For Value Dual Fund
Cumulative Income Shares, Voting $.01 Par Value (File No. 5678)
Lydall, Inc.
Common Stock, $3.33⅓ Par Value (File No. 5679)
Time Warner, Inc.
Depositary Series C 8¾% Covertible Exchangeable Preferred Shares (File No. 5680)
Time Warner, Inc.
Depositary Series D 11% Covertible Exchangeable Preferred Shares (File No. 5681)
Berlitz International, Inc.
Common Stock, $.10 Par Value (File No. 5682)
First Brands Corporation
Common Stock, $.01 Par Value (File No. 5683)
Giant Industries, Inc.
Common Stock, $.01 Par Value (File No. 5684)
MGM Grand, Inc.
Common Stock, $.01 Par Value (File No. 5685)
Patriot Premium Dividend Fund II
Common Stock, No Par Value (File No. 5686)
Polygram N.V.
Shares, NLG $.50 Par Value (File No. 5687)
Edisto Resources Corporation
Common Stock, $.01 Par Value (File No. 5688)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 5, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1207 Filed 1-18-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 12, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Berlitz International, Inc.
Common Stock, $0.10 Par Value (File No. 7-5666)
First Brands Corporation
Common Stock, $.01 Par Value (File No. 7-5667)
Patriot Premium Dividend Fund, II
Common Stock, No Par Value (File No. 7-5668)
Polygram N.V.
Shares, NLG 0.50 Par Value (File No. 7-5669)
Crawford & Company
Common Stock, $1 Par Value (File No. 7-5670)
Stratus Computer, Inc.
Common Stock, $.01 Par Value (File No. 7-5671)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 5, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1208 Filed 1-18-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1151]

Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 6, room 1105 from 9 a.m. to noon, and March 22, 1990 at 10 a.m. in room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the March 6 meeting will be to review and approve delayed contributions for the meeting of Study Group VIII, and to review the results of the February meeting of Study Group VII. The purpose of the March 22 meeting will be to review and approve delayed contributions to the meeting of Study Group XVII, as well as to review previously circulated contributions for non U.S. sources. Other business relevant to Study Group D activities may also be raised.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and individual building passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC., telephone (202) 647-5220. All attendees must use the C Street entrance to the building.

Dated: January 2, 1990.

Earl S. Barbely,

Director, Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90-1248 Filed 1-18-90; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Gem, Payette, Washington and Adams County, ID

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised notice of intent.

SUMMARY: The Federal Highway Administration is issuing this revised notice to advise the public that a decision has been made not to prepare a Draft Environmental Impact Statement as previously announced. No further development work will be done at this time on a proposed new highway between Emmett and Mesa in Gem, Payette, Washington, and Adams County, Idaho.

FOR FURTHER INFORMATION CONTACT: Robert Clour, Assistant Division Administrator, Federal Highway Administration, 3050 Lakeharbor Lane, Suite 126, Boise, Idaho 83703, telephone: (208) 334-1843; or Charles Rountree, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707-1129, telephone: (208) 334-8484.

SUPPLEMENTARY INFORMATION: After completion of formal scoping meetings in September 1989, the Idaho Transportation Department has decided not to continue further development of this project. A Draft Environmental Impact Statement (DEIS) will not be prepared. This decision is based on a determination by the Idaho Transportation Board that strong public opposition to the project and uncertainty of construction funding make it unfeasible to pursue environmental studies at this time. Comments or questions concerning this action should be directed to the Federal Highway Administration at the address provided above.

Dated: January 4, 1990.

Jack T. Coe,

Division Administrator, Boise, Idaho.

[FR Doc. 90-1221 Filed 1-18-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 11, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0987.
Form Number: None.
Type of Review: Extension.
Title: Capitalization and Inclusion in Inventory Costs of Certain Expenses (LR-168-86 NPRM/LR-129-86 TEMP), Notice 88-92, 1988-2 C.B. 414
Description: This reporting requirement is necessary to determine whether taxpayers comply with the cost allocation rules of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayers' changes in methods of accounting.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Responses/ Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 11 hours.
Frequency of Response: Other (In the year of change).
Estimated Total Reporting/ Recordkeeping: 110,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-1201 Filed 1-18-90; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 11, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0180.
Form Number: None.
Type of Review: Extension.
Title: Procedures for Monitoring Bank Secrecy Act Compliance (part 21—subpart C).
Description: All national banks must establish and maintain procedures designed to assure and monitor compliance with the Bank Secrecy Act. This action is required by the Anti-Drug Abuse Act of 1986, Public Law 99-570. This regulation imposes minimum recordkeeping requirements. No undue burden is imposed.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 110.
Estimated Burden Hours Per Recordkeeper: 32 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 3,520 hours.
Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-1202 Filed 1-18-90; 8:45 am]
BILLING CODE 4810-33-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 11, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0047.
Form Number: TFS 2211.
Type of Review: Extension.
Title: List of Data.
Description: Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated burden Hours Per Response: 18 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 450 hours.
Clearance Officer: Mary MacLeod (301) 436-5300, Financial Management Service, room 500-A, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90-1203 Filed 1-18-90; 8:45 am]
BILLING CODE 4810-35-M

Fiscal Service

[Dept. Circ. 570, 1989 Rev., Supp. No. 6]

Surety Companies Acceptable on Federal Bonds; "Winterthur" Swiss Insurance Company, U.S. Branch; Change of Name—Domestication

"Winterthur" Swiss Insurance Company, U.S. Branch, has become a domestic corporation and has formally changed its name to Winterthur Reinsurance Corporation of America, effective September 30, 1989. The Company has last listed as an acceptable reinsurer on Federal bonds at 54 FR 27828, June 30, 1989.

Bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1989 Revision, page 27828 to reflect the following information:

Winterthur Reinsurance Corporation of America. Business Address: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. Underwriting Limitation b/: $14,247,000.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone 202–287–3921.

Dated: January 11, 1990.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 90–1268 Filed 1–18–90; 8:45 am]

BILLING CODE 4810-35-M

Office of Thrift Supervision

Banner Banc Federal Savings and Loan Association, Garland, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Banner Banc Federal Savings and Loan Association, Garland, Texas ("Association") on January 4, 1990.

Dated: January 11, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1192 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

Notice of Appointment of Conservator; Firstcentral Federal Savings Bank, Chariton, IA

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Firstcentral Federal Savings Bank, Chariton, Iowa ("Association") on January 3, 1990.

Dated: January 8, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1193 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

First Guaranty Federal Savings and Loan Association, Hattiesburg, MS; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Guaranty Federal Savings and Loan Association, Hattiesburg, Mississippi ("Association") on January 4, 1990.

Dated: January 11, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1194 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

Notice of Appointment of Conservator; Midwest Federal Savings Bank of Minot, Minot, ND

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corportion as sole Conservator for Midwest Federal Savings Bank of Minot, Minot, North Dakota ("Association") on January 3, 1990.

Dated: January 8, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1195 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

Banner Banc Savings Association, Garland, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Banner Banc Savings Association, Garland, Texas ("Association") on January 4, 1990.

Dated: January 11, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1188 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

Notice of Appointment of Receiver; Firstcentral Bank, a Federal Savings Bank, Chariton, IA

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the resolution Trust Corporation as sole Receiver for Firstcentral Bank, a Federal Savings Bank, Chariton, Iowa ("Association") on January 3, 1990.

Dated: January 8, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1189 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

First Guaranty Bank for Savings, Hattiesburg, MS; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Guaranty Bank for Savings, Hattiesburg, Mississippi ("Association") on January 4, 1990.

Dated: January 11, 1990.

M. Danny Wall,

Director.

[FR Doc. 90–1190 Filed 1–18–90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Receiver; Midwest Federal Savings Bank, Minot, ND

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Midwest Federal Savings Bank, Minot, North Dakota ("Association") on January 3, 1990.

Dated: January 8, 1990.

M. Danny Wall,

Director.

[FR Doc. 90-1191 Filed 1-18-90; 8:45 am]

BILLING CODE 6710-01-M

UNITED STATES INFORMATION AGENCY

Summer English Teaching Institute for South African Teachers and Teacher Trainers

Bureau of Educational and Cultural Affairs; Grant Program; Summer English Teaching Institute for South African Teachers and Teacher Trainers.

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) plans to sponsor a Summer English Teaching Institute for twenty-five South African secondary school teachers and teacher trainers. Participants will be individuals involved with English teaching in black education and will be drawn from schools, teacher training institutions, and the non-formal sector. Minimum qualification will be a two-year teacher training diploma beyond secondary school. USIA is asking for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of teaching English-as-a-Foreign Language(EFL)/English-as-a-Second Language(ESL) and special expertise in handling cross-cultural programs and experience with South African educators.

The general objective of the Institute is to support and encourage the upgrading of secondary education for blacks in the field of English. To meet the needs of the various participants, two academic components within the same Institute should be designed: one for secondary level classroom teachers with responsibilities in curriculum planning and course material development; and one for teacher trainers with responsibilities in supervision and staff training.

Time Frame and General Description

The Institute should be programmed to last five weeks beginning on or about Friday, June 29, 1990 and ending on or about Saturday, August 4, 1990. The participants will arrive directly at the campus site from their home country. It is expected that the university program staff will make arrangements to have participants met upon arrival at the airport nearest the university campus. Few if any participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society and education should be considered an integral part of the Institute and should be held on the first two to three days of the program.

The applicant is asked to design a program with emphasis on methodology, and teaching techniques in EFL/ESL which will meet the special needs of secondary school teachers and teacher trainers from South Africa. The program should include a variety of formats such as discussion sessions, lectures, workshops, and practicums. Lengthy lectures should be kept at a minimum.

The academic program should be complemented by ample time for interaction with American students, faculty, and administrators, and the local community to improve the participants' understanding of the United States. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest, home stays with families in the area (other secondary educators if possible), and events which will bring the participants into contact with Americans from a variety of backgrounds.

Following the program at the university participants may have a short professional/cultural tour of the U.S. which will be handled by a separate U.S. organization.

Program Objectives

Although eventual program objectives will be based to some extent on a pre-program needs assessment (carried out by the U.S. institution selected), some specific areas to address in the Institute are:

1. EFL/ESL teaching methodology in theory and practice; policy issues in the use of English as a medium of instruction for non-native English speakers; transition from mother tongue instruction to English (to the extent appropriate at the secondary level in South Africa).

2. Language improvement in the areas of listening, speaking, writing, and reading and an enhanced understanding of English syntax, pronunciation and semantics.

3. Improvement of pedagogical skills and of skills required for the development of curriculum and teacher-made materials; development of curriculum materials during the Institute which can be used in the home country.

4. Development of supervisory skills in observation and evaluation of classroom teachers, training teachers to handle individual and small group needs in classes with fifty or more students.

5. For teacher trainers: Enhancement of teacher training skills; development of in-service training programs for teachers; designing and conducting workshops to train EFL/ESL teachers.

6. Visits to on-going EFL/ESL classes in local educational or community centers, providing participants with opportunities to practice EFL/ESL skills.

7. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

8. On-going evaluation and adjustment of program components accordingly as well as evaluation of the entire Institute.

9. To the extent possible, Institute materials should be chosen and/or designed to be useful upon returning to South Africa.

10. To the extent possible, program design should exhibit some evidence of adaptability to the different needs of the two groups: that is, to teachers and to teacher trainers.

A short professional/cultural tour of selected sites in the United States may follow the Institute. A separate U.S. organization would be responsible for the post-institute tour and would handle all programming and logistics, management, and expenses of the tour. USIA will inform the Institute grantee of these arrangements at the time of the grant award. The university hosting the Institute will be expected to provide consultation and advice to the organization responsible for programming the post-institute tour.

Requirements

All Institute programming and administrative logistics, management of the academic program, local travel, and on-site university, including enrolling participants in Teachers of English to Speakers of Other Languages (TESOL). USIA will be responsible for all

communications to and from the U.S. Information Service posts in South Africa, and will provide the university with participants' biodata and itineraries and offer any advice or guidance the university might find useful. USIA will also handle travel arrangements from South Africa to the Institute.

Proposals should provide a detailed plan in response to the needs and priorities outlined above. Applicants should draw imaginatively on the full range of resources offered by their universities but may involve outstanding professionals from other universities or organizations. The proposal must clearly demonstrate high quality on-site management capabilities for the academic and cross-cultural components of the Institute. The overall quality and effectiveness of the Institute hinges upon good administrative and organizational capabilities to manage interactions between South African educators and Americans.

All proposals should include the following:

1. A detailed plan in response to the needs and objectives outlined above. The detailed narrative should outline the structure and organization of the Institute including a day-by-day agenda. It should also include a proposed list of appropriate books, reading or preparatory materials which would be sent to participants before their departure for the U.S. providing them with the topics to be discussed, as well as orientation materials preparing them for their stay at the university.

2. Current *curricula vitae* of proposed faculty and consultants.

3. A specific and detailed line item budget for both administrative and program costs. Included in the budget worksheet should be budget explanations detailing how costs were computed, i.e. salaries should include position title, annual salary, and per cent of effort used for this program. The budget should include and elaborate on each of the following:

a. Tuition, salaries and benefits, or services (including support staff) for the Institute program and other direct costs.

b. Housing and board at the university; for example, faculty rsidences, graduate dormitories, home stays, or other if necessary.

c. Transportation costs for all travel during the course of the Institute. (International travel arrangements will be made by USIA and other domestice travel will be handled by the agency programming the post-institute tour.)

d. Miscellaneous costs such as daily maintenance allowance ($10.00 per participant), honoraria, film rentals, certificates, cultural activities, support materials, supplemental book allowance ($150 per participant) and TESOL membership fees.

e. University contributions or cost sharing and/or private sector contributions.

f. Indirect costs which should be held to a minimum.

For your guidance, our experience with similar institutes would indicate that the cost to USIA for this Institute should probably not exceed $90,000. Based on the final number of participants some modifications may be necessary following the grant award.

Evaluation Criteria

An advisory panel of senior USIA officers experienced in TEFL/TESL, the exchange of international educators, and African affairs will use the following criteria when evaluating proposals prior to the decision of the Associate Director for Educational and Cultural Affairs:

(1) Quality and creative design of the Institute;

(2) Quality, rigor, and appropriateness of proposed syllabus to goals of the Institute;

(3) Evidence of the ability to be somewhat flexible in final program design in response to a pre-program needs assessment of the specific program participants;

(4) Clear evidence of the ability to deliver a substantive academic and pedagogical EFL/ESL program;

(5) Demonstrated experience in administration of high quality EFL/ESL programs—experience with South Africa is desirable;

(6) A qualitative evaluation at the conclusion of the Institute;

(7) Evidence of strong on-site administrative and managerial capabilities for international visitors with specific discussion of how managerial and logistical arrangements will be undertaken;

(8)The experience of professionals and staff assigned to the Institute;

(9) The availability of local and state resources for the orientation an Institute;

(10) Access to EFL/ESL professionals and programs from various universities and organizations; and

(11) Cost-effectiveness.

Applicants should submit *10 copies each* of a 500 word summary, a proposal not to exceed 20 typed, double-spaced pages, the detailed budget, and a completed and signed application cover sheet and required certifications. (Required forms may be obtained from USIA.) Final proposals must be received in the Agency by close of business February 20, 1990. The proposal should be submitted to: U.S. Information Agency, Office of Academic Programs, Africa Branch, E/AEA Attn: Dr. Ellen Berelson, Room 232, 301 4th St. SW., Washington, DC 20547, Phone (202) 485-7355.

Dated: January 10, 1990.

Guy Story Brown,

Director, Office of Academic Programs.

[FR Doc. 90-1260 Filed 1-18-90; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 13
Friday, January 19, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 90-1305

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 25, 1990, 10:00 a.m.

This meeting will be open to the public.

The following item has been added to the agenda:

Final Audit Report—

Friends of Gary Hart 1988, Inc.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-1375 Filed 1-17-90; 12:18 pm]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 24, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-1366 Filed 1-17-90; 12:18 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS MEETING

TIME AND DATE: The Board of Directors meeting will be held on January 26, 1990. The meeting will commence at 9:30 a.m. and continue until 5:00 p.m.

PLACE: Washington Court Hotel, Ballroom East, First Floor, 525 New Jersey Ave., NW., Washington, DC 20001, (202) 628-2100.

STATUS OF MEETING: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board of Directors to discuss privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c)(4), (5), (7), and (10) and 45 CFR 1622.5 (c), (d), (f), and (h)].

MATTERS TO BE CONSIDERED: A portion of the meeting may be closed for the reasons cited above, subject to an advance recorded vote of a majority of the Board of Directors.

1. Approval of Agenda.
2. Approval of Minutes.
   —December 15, 1989
3. Discussion of LSC FY 1991 Budget Proposals and Action Thereon.
4. Discussion of the Corporation's Annual Audit and Action Thereon.
5. Discussion of the Corporation's Fiscal Year 1990 Consolidated Operating Budget and Action Thereon.
6. Report on Requests for Emergency Funding and Action Thereon.
7. Discussion of Board Member Requests for Information in Connection with a Pending Investigation Being Conducted by the Corporation's Inspector General and Action Thereon.
8. Discussion of the July 7-8, 1989, LSC Client Self-Help Conference.
9. Election of Board Chairman and Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date Issued: January 17, 1990.

Maureen R. Bozell,

Corporation Secretary.

[FR Doc. 90-1438 Filed 1-17-90; 4:12 pm]

BILLING CODE 7050-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:30 p.m. (closed portion), 3:30 p.m. (open portion), Tuesday, January 30, 1990.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:30 p.m. will be closed to the public. The open portion of the meeting will commence at 3:30 p.m. (approximately)

MATTERS TO BE CONSIDERED: (Closed to the public 1:30 p.m. to 3:30 p.m.):

1. President's Report
2. Finance Project in Central American Country
3. Insurance Project in Caribbean Country
4. Insurance Project in Southeast Asian Country
5. Policy Guidelines on Finance Authority
6. Claims Report
7. Finance and Insurance Reports

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 3:30 p.m.)

1. Approval of Minutes of Previous Meeting
2. Treasurer's Report
3. Reconfirmation of Future Meeting Dates
4. Review of Environmental Policy
5. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation on (202) 457-7007.

Dated: January 16, 1990.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 90-1331 Filed 1-16-90; 4:26 am]

BILLING CODE 3210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that on Friday, January 12, 1990, at 9:55 a.m., the Board of Directors of the Resolution Trust Corporation met in closed session to consider certain matters relating to internal corporate activities and the resolution of a failing thrift institution.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred by Director M. Danny Wall, (Director of the Office of Thrift Supervision), and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of

subsections (c)(2), (c)(8), (c)(9)(A)(ii) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(8), (c)(9)(A)(ii) and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 12, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90-1385 Filed 1-17-90; 12:49 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 meetings during the week of January 22, 1990.

A closed meeting will be held on Tuesday, January 23, 1990, at 10:30 a.m.

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 Schapiro, duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 23, 1990, at 10:30 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Formal order of investigation.

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: Ronald Mueller at (202) 272-2200.

Dated: January 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1368 Filed 1-17-90; 12:18 pm]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1425]

TIME AND PLACE: 9 a.m. (EST), January 23, 1990.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meetings held on November 16 and 22, 1989.

DISCUSSION ITEM

1. Draft Environmental Impact Statement—TVA's Lake Improvement Plan—in the form of its Tennessee River and Reservoir System Operation and Planning Review.

ACTION ITEMS

Old Business

1. Nickajack Lake Land Management Plan.

New Business

B—Purchase Awards

*B1. Request for Proposals NU-45183B for Indefinite Quantity Term Agreement for Steam Generator Services and MA-45247B for Requirements for Associated Fuel Inspection and Services—Sequoyah Nuclear Plant—Combustion Engineering, Inc.

B2. Request for Proposal LF-44862B—Requirements Contract for Raychem Class 1E High and Low Voltage Heat-Shrinkable Equipment and Accessories—All Nuclear Plants.

B3. Request for Proposal HE-78413A—500-kV Power Transformer Conversion—Davidson, Tennessee, 500-kV Substation.

B4. Requisition 20—Term Coal for Bull Run Fossil Plant—Small Business Administration's 8(a) Program.

B5. Requisition 79—Spot Coal for Widows Creek Fossil Plant Units 1-6.

B6. Requisition EJ-04100A—Purchase of Motor Vehicles—General Services Administration.

E—Real Property Transactions

E1. Abandonment of Easement Affecting Approximately 1.05 Acres of Land in Bradley County, Tennessee.

E2. Abandonment of Easement Affecting Approximately 1.1 Acres of Land in Anderson County, Tennessee.

E3. Abandonment of Easement Affecting Approximately 2.2 Acres of Land in Roane County, Tennessee.

E4. Sale of Flat Woods Lease in Koppers Coal Reserve in Campbell County, Tennessee.

F—Unclassified

*F1. Proposed TVA Code III Employee Awards.

*F2. Supplement No. 1 to Contract No. TV-78334A with Coopers and Lybrand.

F3. Proposed and Revised TVA Codes II Budget, Plan; Cost Allocation; Financial Controls; Joint Activities; Payment Certification and Disbursements; Receivables; and Travel and Foreign Service.

F4. Proposal to Establish a Data Integrity Board.

F5. Amendment to TVA Code II Privacy—Delegations.

F6. Resolution Approving the Filing of Condemnation Cases.

F7. Contract for Additional Services of Bishop, Cook, Purcell & Reynolds.

F8. Supplement No. 1 to Contract No. TV-75959A with Federal Emergency Management Agency—Community Assistance Program.

F9. Supplement No. 5 to Contract No. TV-61494A with The Natural Hazards Research and Applications Information Center, University of Colorado—Floodplain Management Program.

F10. Supplement No. 3 to Contract No. TV-73618A with U.S. Department of Commerce, National Oceanic and Atmospheric Administration, and Increase in Approval Authority Delegated to Vice President of River Basin Operations for Subsequent Fiscal Year Commitments.

F11. Supplement No. 8 to Contract No. TV-70362A with U.S. Department of Energy, Oak Ridge National Laboratory—ORNL Spill Forecasting.

F12. Contract No. TV-80153T Between Appalachian Regional Commission and TVA.

F13. Contract No. TV-80047T Between Tennessee Technology Foundation and TVA.

F14. Project Order from U.S. Army for Loan of TVA Employees to Rocky Mountain Arsenal—Phase III of Chemical Agent Safety Program.

F15. Supplement No. 2 to Personal Services Contract No. TV-77737A with American Technical Associates, Inc.

F16. Supplement No. 4 to Personal Services Contract No. TV-71471A with H.E. Stone, Inc.

F17. Supplement No. 11 to Personal Services Contract No. TV-72992A with United Engineers and Constructors, Inc.

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*Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee.

Dated: January 16, 1990.

William L. Osteen,

Associate General Counsel.

[FR Doc. 90-1389 Filed 1-17-90; 12:49 pm]

BILLING CODE 8120-01-M

Corrections

Federal Register
Vol. 55, No. 13
Friday, January 19, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064-AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

Correction

In rule document 89-29905 beginning on page 52923 in the issue of Tuesday, December 26, 1989, make the following corrections:

1. On page 52923, in the first column, under **SUMMARY**, in the 13th line, add "of deposits", after "transfer".

2. On the same page, in the same column, in the 22nd line, "transaction" should read "transactions".

3. On page 52925, in the first column, in the third line from the bottom, add "retained deposit base as necessary over the course of the" after "the".

4. On page 52926, in the first column, in the second line from the bottom, "90" should read "80".

5. On the same page, in the second column, in the second line from the top, "80" should read "90".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0002]

Drug Export; Theophylline Controlled Release Capsules 75 Mg

Correction

In notice document 90-394 beginning on page 666 in the issue of Monday, January 8, 1990, make the following corrections:

1. On page 667, in the first column in the 4th line "(21 U.S.C. 392)" should read "(21 U.S.C. 382)".

2. On the same page, in the same column, in the 8th and the 15th lines, "702" should read "802".

BILLING CODE 1505-01-D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222, and 1224

RIN 3095-AA45

Creation and Maintenance of Records; Adequate and Proper Documentation

Correction

In proposed rule document 90-435 beginning on page 740 in the issue of Tuesday, January 9, 1990, make the following corrections:

§ 1222.34 [Corrected]

1. On page 742, in the second column, under § 1222.34(a) in the 9th to 11th lines, "Applying the definition of records to most documentary materials." should be removed the first time it appears.

2. On the same page, in the same column, under § 1222.34(c)(1), in the last line, "businesses" should read "business".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[T.D. ATF-292; Ref: Notice Nos. 658, 668, 676, 686]

RIN 1512-AA81

Label Disclosure for Brandy and Whisky Treated With Wood (87F212P)

Correction

1. In rule document 90-640 beginning on page 1061 in the issue of Thursday, January 11, 1990, make the following correction:

2. On page 1064, in the first column, in the first complete paragraph, in the 17th line, add "in the methods and materials used in preparing infusions" after "variation".

BILLING CODE 1505-01-D

federal register

Friday
January 19, 1990

Part II

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS-FRL-3698-9]

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Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline and Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking relates to EPA's proposed requirements for a combined vehicle and fuel-based program to control evaporative emissions from gasoline-fueled light-duty vehicles, light-duty trucks, and heavy-duty vehicles as described in a Notice of Proposed Rulemaking (NPRM) dated August 19, 1987 (52 FR 31274). It proposes modifications to the test procedures contained in the 1987 NPRM dealing with the issue of running losses and other evaporative emissions.

In light of the recent promulgation of standards for methanol-fueled vehicles (54 FR 14426, April 11, 1989), the evaporative test procedures and standards of today's notice should be considered as applying equally to those vehicles.

DATES: The comment date will end 30 days after the public hearing. EPA will conduct a public hearing on this proposal in Ann Arbor, Michigan, on or before February 20, 1990. Further information about the hearing will be published shortly in a separate Federal Register notice.

ADDRESSES: Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A-89-18, at: Air Docket Section, U.S. Environmental Protection Agency, Attention: Docket No. A-89-18, First Floor, Waterside Mall, Room M-1500, 401 M Street SW., Washington, DC 20460.

Materials relevant to this notice have been placed in Docket Nos. A-85-21 and A-89-18 by EPA. Both dockets are located at the above address and may be inspected between 8:30 a.m. and noon and 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Tad Wysor, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone: (313) 668-4332.

For public hearing information contact: Ms. Karen DeUrquidi, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, telephone: (313) 668-4504.

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 19, 1987 EPA published in the Federal Register a proposed requirement for the control of gasoline volatility and vehicle evaporative emissions (52 FR 31274). The proposal included changes to existing test procedures for evaporative control systems intended to ensure that these systems be designed to work effectively and maintain their level of control under in-use operating conditions.

Analyses performed by EPA in response to manufacturers' comments have led to the conclusion that the test procedure changes proposed for existing evaporative controls were insufficient to accomplish the goal of insuring effective in-use control of evaporative emissions. This included consideration of new information (described below) regarding vehicle "running losses." EPA held a public workshop on this topic on June 30, 1988 and has subsequently developed the revised, proposed test procedure changes described in this notice.

In addition to the above matters, EPA wishes to clarify the intent of its August 19, 1987 proposal of revised evaporative emission test procedures with respect to methanol-fueled vehicles. On August 29, 1986, EPA proposed emission standards and test procedures for methanol-fueled vehicles (51 FR 30984) which were essentially the same as those for gasoline-fueled and diesel vehicles, where common pollutants existed. As such, they included provisions to apply the then-existing evaporative emission test procedures to methanol-fueled vehicles.

At the time of the August 1987 proposed evaporative test procedure revisions, no final decision had been made on the adoption of the earlier proposed methanol-fueled vehicle provisions. Therefore, methanol-fueled vehicles were not specifically addressed in the 1987 proposal. However, EPA recently promulgated the methanol-fueled vehicle standards and test procedures (54 FR 14426, April 11, 1989). It is the Agency's intent that the proposed revisions to the evaporative test procedure, in both its August 19, 1987 proposal and today's changes, should apply to methanol-fueled, as well as gasoline-fueled vehicles. Therefore, although methanol-fueled vehicles are not specifically identified in the proposed regulatory language, reviewers should consider all of the proposed changes to the evaporative test procedures as applying equally to methanol-fueled vehicles. EPA would especially welcome comment on this aspect of its proposals.

Late in the development of this proposal, EPA performed a new analysis of the hot-soak, diurnal, and running loss emission reductions available from these proposed regulations. In the new analysis, the effect of the proposed improved controls on hot-soak, diurnal, and running loss emissions is estimated from a MOBILE4.0 baseline. These revised emission reductions do not affect the Agency's decision to go forward with these proposed regulations. We welcome comment on the updated emission reduction estimates, which are further discussed in section IV.C. below.

Finally, during the Agency's final review process for this proposal, General Motors (GM) brought to our attention a test procedure different from and more comprehensive than the one proposed here. The GM alternative would measure evaporative and running loss emissions as well as a separate type of emissions GM calls "resting losses." After a preliminary review, EPA believes that a procedure incorporating elements of the GM proposal may improve in some ways on the shorter procedure proposed here.

The GM procedure is similar to EPA's up to and including the exhaust test segment, except that no heat build is performed. It then adds a high-temperature soak, a running loss test (using either an enclosed dynamometer test or a "point-source collection" method), a hot-soak test, and two or three "real-time" diurnal cycles. Additional information regarding the GM test procedure may be found in the docket.

EPA encourages comment on the proposed GM procedure. Such comments should address the sequencing of test segments (including where a cap-off procedure might be appropriate in the sequence), what test conditions (temperatures, pressures) should be used for each test segment, and how each segment should be performed in the laboratory. In addition, since a procedure incorporating GM's

approach would require significantly more equipment and test time than the shorter and simpler procedure proposed below, we request comments on how any benefits of the GM's approach balances the increased test burden of such alternatives.

If after further development and comment EPA were to choose to incorporate such a procedure in a final rulemaking, we anticipate that the Administrator would retain the authority to test vehicles both on a shorter procedure such as that proposed below and on a longer procedure as discussed above.

The remainder of this notice will deal with the various aspects of the proposal in more detail. Section II will describe the changed circumstances leading up to the proposed new provisions affecting the design of evaporative emission controls. Section III will describe the modifications and EPA's purposes behind them. Section IV will review the impact of the proposed test procedure modifications in terms of both benefits and cost and describe the overall cost effectiveness of these revised evaporative test procedures.

II. Background

In its August 1987 refueling proposal, the Agency indicated its expectation that onboard system designs used by manufacturers would be integrated with current evaporative control functions and use a single canister system to collect both evaporative and refueling emissions. The alternative to such integrated systems would be non-integrated (or partially-integrated) systems which add refueling control hardware to current evaporative controls as a largely or completely separate system. Although both of these approaches could be equally effective in controlling refueling emissions, only the integrated approach could assure sufficient evaporative emissions control as well.

The President's proposed revisions to the Clean Air Act would require the control of refueling emissions using Stage II controls. Since service station controls have no effect on vehicle evaporative emissions, the Agency is going forward with today's proposed evaporative emissions control program.

It is the intent of EPA that evaportive emission control systems be designed to function effectively under the rigors of in-use conditions. The present evaporative emission test procedure was intended to assure that systems are designed to provide adequate evaporative emissions control in actual use. However it is now apparent that the present test procedure does not provide adequate assurances of such control. Thus, in the August 1987 NPRM, EPA proposed to modify the procedure by requiring an additional step to load the canister to breakthrough, as explained below. However, the analysis which the Agency has conducted since the NPRM reveals that this proposed modification is not sufficient to provide the required assurances. Therefore, EPA believes that further test procedure changes are needed and the Agency is today proposing several additional modifications to the test procedures to ensure that running loss and excess evaporative emissions are controlled in-use.

One measure EPA proposed in its 1987 NPRM for refueling emissions (52 FR 31162, August 19, 1987) was a limitation on the refueling fill rate of in-use gasoline pumps to 10 gallons per minute. Fuel spitback can be a problem for some fill neck designs when fuel fill rates are too high, leading to emissions from spillage as well as a safety hazard. EPA is exploring this issue further and may incorporate a fill rate restriction as a part of the final rule resulting from today's proposal. EPA welcomes further comments on the issue of fuel spitback during refueling and on the appropriateness of the proposed fill rate limitations, or alternative fill rates, as a way of reducing spitback-related spillage and evaporation.

III. Modifications to the Proposed Test Procedures

A. Revised Diurnal Heat-Builds

The most significant change embodied in today's proposal involves an improvement to the evaporative test procedure to make it more representative of in-use conditions on high ozone days. The improved procedure is based upon multiple, rather than single diurnal heat builds conducted at temperatures representative of high ozone day temperatures. Based upon limited modeling,[1] the Agency believes that the addition of these diurnal heat builds will adequately simulate the additional vapor handling capacity required of vehicle control systems.

Multiple diurnals are representative of many real-world conditions encountered by vehicles. For example, EPA analysis of driving pattern survey data[2] indicates that more than 16 percent of the fleet experiences two or more multiple uninterrupted diurnal cycles. The impact of such conditions on evaporative systems designed to control only a single diurnal will lead to canister overload and breakthrough, resulting in uncontrolled emissions. Thus the Agency believes it essential that the evaporative test procedure be modified to require additional evaporative system capacity to control emissions from a second diurnal. Although the Agency believes that the control of two diurnals in the context of the other proposed test procedure modifications is sufficient to control evaporative emissions under most in-use conditions, the Agency solicits comments on whether more or fewer diurnals might be more appropriate. Such comments should include the methodology used to reach the conclusions and should detail effects on testing burden, air quality and cost.

EPA believes that this proposed test procedure will achieve the desired goals at a low additional testing cost and with minimal change to the existing test procedures. The Agency requests comment on alternative test procedures, such as modifying the driving cycle portion of the Federal Test Procedure (FTP) in order to test vehicles under conditions more representative of high-ozone days (*e.g.*, increased ambient temperatures). EPA presently believes that such a test would likely be complex and costly since it would introduce a set of new practical challenges. For example, test programs to collect and measure running losses have demonstrated the difficulty of operating and testing a vehicle at elevated temperatures in an enclosed test cell while adequately simulating on-road conditions.

The Agency remains open to the possible need to develop a discrete running loss test. Any comments on this point should describe in detail alternative test procedures and their potential advantages and disadvantages compared to the proposed procedures (*e.g.*, complexity and cost of testing, confidence in results, representativeness of actual in-use experience, etc.).

Alternative test procedures which would make possible direct measurement of running losses might facilitate the development of averaging and trading programs for vehicle emissions as a way of achieving the Administration's goals of promoting greater reliance on such approaches. An averaging program would be designed to allow manufacturers which so desire to select the optimal mix of evaporative, running loss, and exhaust emission control for each vehicle design and thereby achieve the required emission control at the lowest cost. However, implementing any averaging program would require a testing regime able to accurately simulate in-use emissions over the range of in-use conditions and

driving patterns. EPA recognizes that developing such a testing regime for evaporative and running loss emissions would present difficult challenges (for example, quantifying in-use "background" emissions below the current 2.0 gram per test standard and better understanding in-use emissions in situations when canister breakthrough or running loss vapor generation are occurring). In any averaging program, EPA would need to asssure that any emissions proposed to be credited or offset were accurately measured and that the goal of no loss in average in-use vehicle emission control would occur.

In order to determine temperature conditions for the diurnal heat builds which would be representative of those on high ozone days as opposed to those for the average summer day, the Agency examined both maximum daily temperatures and diurnal temperature change for ozone non-attainment areas which are classified as ASTM Class C areas during high ozone periods.[3] From ozone monitor data for 1985–1987 non-attainment areas, EPA identified the particular ozone monitor which was the source of the nonattainment designation for each area. Lacking meteorological data for the same period, the Agency was unable to identify diurnal temperatures directly corresponding to the 1985–1987 exceedances. Since the most recent meteorological data available was from 1984, the Agency instead identified all violations of the ozone standard in 1984 for the 1985–87 design value monitors, and then ranked the data by maximum daily temperature.

From this array, EPA identified the 90th percentile maximum temperature on ozone violation days for each city. When all values at or above these levels were averaged, the result was 96 °F. The corresponding diurnal temperature change was 25 °F, sufficiently close to the temperature change of 24°F used in the current test procedure. Thus, no change in the current value appears necessary. The diurnal temperature range for conditions more representative of high ozone days was thus identified as 72–96 °F.

Based upon the above, the revised evaporative test procedure proposed today consists of the current FTP, followed by two representative diurnal heat builds, which use a temperature range of 72–96 °F. Actual measurement of evaporative emissions for compliance with the standard will only be made for the hot-soak test in the FTP and for the last diurnal heat-build (the second of the two newly-added diurnal cycles). The sum of these two evaporative emissions measurements would be subject to the current 2.0 gram HC/test evaporative emission standard. Because this test would be conducted at higher temperatures, it would require improvements to vehicle evaporative controls to increase vapor handling capacity, as discussed further below. At the same time, EPA's evaluation of the new requirements indicates that as long as this increased capability is provided, the feasibility of the 2.0 gram/test standard is not affected.

Prior to the final rule for this action, we will have available ozone monitoring data and daily meteorological data for most high ozone events during 1986 through 1988. The Agency may choose to revise the proposed 72–96 °F temperature range based on this newer, more complete data. The Agency may select an alternate methodology in establishing the temperature range. One possible methodology would rank each area's ozone days by ozone concentration and then average for each area the high temperatures and diurnal changes on the days of the highest 10 (or some other number of) ozone observations. These area-specific average high temperatures and diurnal changes would then be converted into nationwide average values by population-weighting the city-specific values.

The EPA requests comment on the appropriate methodology for estimating the proportion of vehicles experiencing multiple diurnal episodes. The Agency also requests comment on the appropriate methodology for determining the diurnal temperature range to represent high-ozone days. Finally, we request comment on EPA's conclusion that the 2.0 g/test evaporative standard need not be changed in response to the proposed test procedure changes.

B. Revisions to Prevent Vapor Venting

EPA is also proposing revisions to insure that all vapors generated in the fuel tank are directed to the evaporative control system (canister or engine) and are not allowed to vent directly to the atmosphere; this approach is somewhat analogous to the positive crankcase ventilation (PCV) requirement which requires that crankcase vapors not be vented to the atmosphere. The Agency has found that pressure relief vents have become a more common feature of evaporative controls. These vents, which generally operate at lower pressure settings than the safety vents in fuel caps, appear to result in significant uncontrolled emissions under some driving conditions, contributing to vehicle running losses (see Section IV below for preliminary running loss results). In general, these emissions are the result of fuel tank vapors being generated at a rate exceeding the capability of the evaporative emission control system to vent them either to the engine or to the charcoal canister.

EPA's current evaporative emissions test procedure has provisions to measure "running losses" and include them in determination of compliance with the evaporative standard if engineering analysis indicates the need to do so (§§ 86.127–82(d)(2) and 86.143–78). However, the Agency has never implemented this requirement and currently does not have specific procedures for running loss measurements.

In response to this situation, the Agency believes it is necessary to propose new requirements aimed at insuring that fuel tank vapors are, in fact, vented to the evaporative control system. Lacking this, such vapors could continue to be vented directly to the atmosphere, defeating the capability of the evaporative control system to prevent these emissions under most in-use conditions. Thus, the revised evaporative emission test procedure described above will provide adequate control system capacity to handle running losses under most in-use conditions, while the containment provisions described in this section will insure that these fuel tank vapors are directed to the control system rather than being directly vented.

EPA's proposed vapor containment requirement is twofold. First, system designs, components, and layouts would be reviewed to insure that all hydrocarbon vapors are sent to either the engine or the charcoal canister. Vents would still be allowed, but only to provide emergency safety relief in case of equipment damage or malfunction (*e.g.*, blocked vapor lines). As with EPA's PCV control requirement, compliance would be based upon a straightforward review of the hardware configuration to determine that vent valves and lines were adequately sized to handle high vapor flow rates without generating sufficient pressure to activate any tank emergency vents.

As an alternative to the engineering review, the Agency would consider other test procedures which would measure running losses or assure their absence. For example, one possible procedure might be to block the vent line from the fuel tank to the charcoal canister and then determine during operation and non-operation whether the fuel tank can maintain a certain pressure differential over a certain period of time. Such a procedure would

have to provide assurance that excess vapors would not be emitted directly to the atmosphere. The Agency solicits detailed comment on how to conduct any such alternative test procedures, what standards would be appropriate (*e.g.*, test pressure and period of time that pressure is maintained in the example above), and the nature of any impacts on certification testing burdens or costs.

EPA is proposing to modify the evaporative test procedure to require a momentary gas cap removal and replacement at the beginning of the hot soak test. There are two reasons for this proposed change. One reason is to encourage the use of low fuel tank pressure and high vapor flow designs. As also described below in Section C., such systems would appear to provide the best assurances that in-use running losses will be controlled, given the simplified nature of the proposed test. For example, it is a concern that vehicles which would develop some tank pressure under the moderate temperature conditions of the FTP would likely develop much higher tank pressures under higher-temperature, high-ozone day conditions, with significant vapor venting through pressure relief valves. Evaporative systems designed to avoid such pressures remove a concern. However, the procedure would still permit higher tank pressure designs if tank pressure is relieved before the fuel cap is removed. The second reason for the proposed cap-off provision is to reduce or eliminate any vapors released after the cap is removed but before refueling begins. Finally, an added benefit of the cap-off requirement would be to reduce the safety problems related to fuel spurting.

EPA has proposed to place the cap-off requirement at the beginning of the hot soak test, since tank pressure after operation would be highest at the beginning of the hot soak test. In addition, in-use removal of the cap for refueling generally occurs just after a period of operation.

EPA solicits comments on this momentary cap removal requirement. In particular, we request comment on the impact of the proposed placement of this requirement in the sequence of the proposed test procedure.

For example, vehicle manufacturers may find the proposed test more difficult to pass for some evaporative system designs than for others. The cap removal as proposed is followed by the remainder of the hot soak test and the measured double diurnal heat build. This would require canisters to handle any vapors released to the canister by the cap removal plus the hot-soak and diurnal loadings. On days of actual refueling, in-use vehicles would typically be driven some distance between refueling and parking, thereby partially or fully purging the canister prior to additional hot-soak and diurnal loadings.

It appears possible that some potential designs for improved evaporative systems (*e.g.*, some high-purge, small canister designs with pressurized tanks) might make use of the post-refueling purge to adequately prepare the canister for subsequent hot-soak and diurnal loadings in-use but nevertheless require greater canister capacity in order to pass the test procedure. The EPA solicits comment on: (1) How the proposed test procedure would impact different control system designs, and (2) how any alternate suggestions for test procedure modifications would impact the testing burden, control cost, or emission reductions.

The vapor routing measures described above, in combination with the other test procedure changes described earlier, are intended to produce control systems having a vapor-handling capacity commensurate with most expected in-use vapor generation rates. The projected costs of meeting these requirements are included in Section IV of this proposal.

In a separate action, EPA has recently promulgated (at 54 FR 13326, April 11, 1989) various regulations for methanol-fueled vehicles, including the control of evaporative emissions. In light of that action, it is the Agency's intent that today's proposed changes to the evaporative emissions requirements (both test procedures and the vapor containment requirements) be viewed as also applying to methanol-fueled vehicles. Therefore, although methanol-fueled vehicles are not specifically identified in this proposed regulation, commenters should consider this proposal as applying to methanol-fueled vehicles as well.

C. Solicitation of Comments

In developing these proposed modifications to test procedures, the basic goal is to control excess diurnal and running loss emissions from typical vehicle use on high ozone days. A secondary goal is to minimize cap-off emissions prior to refueling. As a practical matter, measurement of evaporative emissions is fairly straightforward and well established; however, it is difficult to measure running loss emissions directly, and experience with such procedures has been limited. As discussed above, EPA is proposing to implement the above goals by modifying the test procedures in a relatively modest way, by requiring two representative diurnal heat builds at the end of the FTP, the removal of the fuel tank cap near the beginning of the hot soak test, and an engineering review of control system designs to ensure that any vapors generated under conditions typical of high-ozone days are routed to the evaporative control system. EPA believes that this approach will ensure that control systems have the capacity to control evaporative emissions and running losses under high ozone day conditions.

EPA solicits comments on how best to achieve the stated goals. For example, should EPA develop an alternative, more realistic test procedure for running losses, permitting separate testing for diurnal emissions and running losses? A discrete running loss test procedure with an explicit emission performance standard may provide manufacturers with more flexibility in vehicle design. The proposed approach relies on an engineering review of the nature of vehicle emission controls. An alternative, performance-based procedure may allow more flexibility in system design than the engineering review provision.

EPA does not intend to discourage any control system designs which would achieve the necessary emission reductions in actual use. Current regulations provide manufacturers the opportunity to request the use of different test procedures if a vehicle "is not susceptible to satisfactory testing" by the existing procedures (40 CFR 86.085-27). Such a request might be appropriate, for example, in the case of an insulated tank design which might result in lower in-use tank temperatures and an inability to directly heat the tank during testing. A manufacturer which clearly demonstrated different in-use temperature characteristics and/or a more appropriate fuel-heating procedure for the test would likely receive permission for incorporating such changes in the test. EPA requests comment on whether further flexibility is necessary to avoid precluding the introduction of innovative control approaches.

EPA intends for the proposed test procedures to encourage designs that operate at low fuel tank pressures, although higher pressures may be possible if tank pressure is relieved upon removal of the gas cap. Low fuel tank pressure designs would be characterized by high vapor flow and purge capacity. As compared to pressurized systems, such designs would require more sophisticated purge

controls that are able to process a greater variety of fuel vapor loadings under diverse driving patterns without causing unacceptable deterioration in vehicle exhaust emissions or performance.

EPA believes that particularly in the absence of a direct test for running losses, low-pressure systems with high flow capacity will provide the best assurance that running losses would be controlled under in-use conditions more severe than our conventional FTP. The FTP temperatures themselves may not generate large volumes of vapor during the test; sufficiently high purge capacity would nevertheless provide EPA with a reasonable assurance that in-use running losses would be controlled. Such designs would have the added benefit of better control of in-use conditions involving limited opportunities for canister purge, such as repeated short trips or extended low-speed driving.

EPA solicits comment on how well the proposed test procedure modifications achieve the goals of controlling evaporative and running loss emission. EPA also solicits comment on how well the proposed test procedure simulates actual conditions (and likely vehicle emissions). For example, do the proposed test temperatures for the diurnal heat builds accurately represent in-use conditions on high-ozone days?

EPA solicits comments on the cost, emission reduction potential, and safety implications of low- and higher-pressure designs as well as other emission control designs that can achieve EPA's emission control goals as described above. Finally, EPA requests comment on the implications of EPA's preference for low-pressure systems on emission control, costs, and vehicle safety and performance.

D. Additional Test Procedure Changes

As previously noted, EPA received substantial comment on the previously proposed test procedure. These comments raised a number of issues and suggested various improvements. From reviewing the comments, EPA has identified a number of less significant changes which can be made to clarify or improve the regulations. These changes will be discussed below. The Agency also wishes to review some areas of comment which have not resulted in any changes, but which are still significant because the indicate the need to clarify EPA's intent with regard to expected performance aspects of these proposed evaporative controls.

1. Issues Raised by Commenters

Most manufacturers have continued to object to EPA's desire to begin both the refueling and evaporative test sequences with a procedure to load the canister to the breakthrough point or beyond. It has been argued that this requirement will reduce control capacity because it forces manufactuers to use the smallest possible canister size which will still allow passage of the test requirements.

In response to these concerns, the Agency wishes to emphasize its view on the importance of the canister loading requirement. It is the requirement which gives the Agency confidence that certified systems will have adequate purge to control generated vapors and to recover from highly loaded states. In-use conditions often exist which will cause canister loading beyond breakthrough. The proposed procedures insure that control systems will (1) recover from such loadings quickly when the vehicle is driven and (2) resume normal operation.

As for the size of the canister required to accomplish this objective, it is clear that manufacturers would have to increase the canister size or purge rates compared to current vehicles. However, the Agency believes that the smallest canister sizes meeting the proposed requirements will be the best performing systems in use. These systems will have increased purge rates compared to larger canisters and will recover their control capacity more quickly following an overload condition.

Another broad area of comment on the proposed test procedure concerned what commenters believed to be an unacceptable degree of variability in the procedure, including variations in the specific amount of canister loading possible using the proposed breakthrough procedure, and variations in purge volume during the vehicle drive sequences. The agency understands, and anticipated in the August 1987 NPRM, that control systems will experience wide variations in canister loading and driving conditions during actual in-use operation. We intend for these systems to perform adequately (*i.e.*, to be able, with a short drive, to purge the canister sufficiently to handle subsequent hot soak and diurnal emissions) regardless of the exact degree of canister loading at the beginning of operation. In fact, as stated in the August 1987 NPRM, the Agency intends to test in-use vehicles with their canisters in an as-received condition if they are loaded beyond the breakthrough point.

The intent of the canister loading procedure is to achieve loading to at least the breakthrough point. That is, it is intended not so much to achieve an exactly repeatable condition for a marginally designed control system as it is to insure that the canister receives "a heavy, near saturation, loading at the start" of the test (52 FR 31196, August 19, 1987). An appropriately designed vehicle would not be sensitive to the degree of loading beyond breakthrough.

Similarly, variations in purge during conditioning should be viewed as similar to what will occur with in-use vehicles. Indeed, because of the carefully controlled laboratory test conditions, these variations will be much less than in-use vehicles will routinely experience. Therefore, the Agency expects control systems to perform adequately in spite of some variation in test conditioning.

Lastly, commenters on the parallel requirements for heavy-duty gasoline-fueled vehicles argued that the requirements as applied to these vehicles were overly stringent and that it was not possible to adequately purge these vehicles over the proposed driving sequences. They therefore requested that EPA exempt heavy-duty gasoline-fueled vehicles from any more stringent evaporative control requirements.

The Agency agrees that the heavy-duty requirements may indeed be more difficult to meet than those for light-duty vehicles and light-duty trucks. However, this is a result of the fact that the heavy-duty operating environment is itself one which makes it more difficult to adequately purge the canister. Insofar as the heavy-duty driving cycle used to condition the vehicle is shorter than the light-duty cycle, and requires engines to operate at a higher load factor than does the light-duty cycle, the respective driving cycles reflect realistic differences in actual in-use conditions. Thus, it is reasonable and appropriate to expect the vehicle manufacturer to develop purge control strategies which will be effective in that in-use environment. The only situation which would merit an exemption would be a finding by EPA that the requirements are not feasible. However, there is insufficient information in the comments received to date to support such a position. Therefore, EPA is retaining heavy-duty gasoline-fueled vehicles in the requirements proposed here. Commenters who have information and data relating to the feasibility of the heavy-duty vehicle requirements are invited to submit such materials for consideration.

2. Other Proposed Test Procedure Changes

As previously noted, there are a number of test procedure improvements which EPA has identified in response to comments received in response to the August 1987 NPRM and which are included in today's proposal. Although of a less significant nature, they should help to improve the procedures or in some cases clarify details of testing. The improvements include: (1) Elimination of the vapor generation technique proposed for loading evaporative canisters not connected to the fuel tank and allowing manufacturers to develop alternative approaches when a canister cannot be loaded by multiple diurnals, (2) deletion of the requirement to remove the fuel cap while vehicles are being stored indoors awaiting testing (the fuel cap will still be removed for outdoor storage), (3) elimination of unneeded multiple definitions of canister breakthrough inadvertently included in the earlier proposal, (4) allowing an option of controlling fuel tank skin temperature during vehicle soaks for cases where this would be preferred to regulation of the entire soak area temperature, and (5) other minor miscellaneous changes based upon comments received. These changes will be briefly described in the following paragraphs and are all listed in the Appendix to this NPRM. Readers should review the proposed regulations carefully to gain a full understanding of all of the changes.

The first change resulted from a number of comments that certain potential vapor generation equipment for canister loading presented a possbile safety hazard. This equipment, to be used for loading canisters that were not connected to the fuel tank in any way and therefore could not be loaded by vapors from vehicle refuelings or repeated diurnal heat builds, generates vapors by heating a five-gallon container of fuel and then bubbling nitrogen through the fuel. Given the concerns about a possible safety hazard, EPA has dropped this approach from the proposed regulations. The situation it was intended to address is quite rare, and EPA will leave it to the manufacturers to suggest an alternative vapor loading technique when needed, subject to approval by the Administrator.

Another earlier proposed aspect of the test procedures also generated concerns about testing safety. In this case, commenters were concerned about the release of vapors from vehicles being stored indoors with their fuel caps removed. The cap removal step was intended to prevent unusual vapor loadings to the canister if a vehicle underwent an extended period of storage. As such, the chief concern was for vehicles stored outside, where they would be exposed to repeated diurnal loadings. Indoor temperatures are expected to be essentially constant, so that little vapor generation would occur there; certainly not enough to affect test results since the canister loading process would still need to be done before beginning actual testing. Given this situation, the Agency has decided to respond to the comments by proposing to require the cap removal step only for vehicles stored outdoors. The regulations proposed here reflect that change.

The next area of change concerns the regulatory definitions for canister breakthrough. As pointed out by several commenters, the previously proposed procedures included three somewhat different definitions of the minimum acceptable canister loading to be used in determining when the breakthrough point had been reached. In today's proposed rule, these definitions are reconciled as much as possible.

For refueling canisters, breakthrough has been defined as that point where a rapid increase in hydrocarbon concentration is detected within the Sealed Housing for Evaporative Determinations (SHED). This is indicated by a threefold increase in the concentration of HC in the SHED during a one-minute period. This definition has proved to be a satisfactory method for detecting breakthrough at the vapor flow rates characteristic of refueling events. The same method has been evaluated by EPA for use with the loading of evaporative canisters and found to be unsatisfactory. The low rate of vapor release associated with diurnal heat build emissions is not generally sufficient to cause the rapid increase in SHED vapor concentrations associated with this definition of breakthrough. Therefore, a somewhat different approach is included in today's proposal. When loading evaporative canisters using diurnal heat builds, breakthrough will be defined as the point where at least 2.0 grams of vapor have been emitted into the SHED. The 2.0 gram level has been chosen because it represents an amount corresponding to the total evaporative emission standard.

There will still be differences in canister loading produced when diurnal heat builds are used to load the canister (evaporative emissions canisters) compared to repeated refuelings (refueling canisters). However, these differences should correspond to similar differences in loading conditions experienced by these canisters in actual use. Therefore, EPA believes this to be an appropriate approach to canister loading.

Finally, although they will not be enumerated here, it should be noted that there are other minor changes to the regulations proposed today. These proposed changes, resulting from EPA's review of comments received, involve such things as clarifying some of the procedural details for testings and reducing the amount of supporting test data required to be collected. All changes are identified in the Appendix to this preamble.

IV. Impacts of Proposed Changes to Evaporative Test Procedures

The revisions to the evaporative emission test procedures being proposed today are expected to affect both future vehicle design and cost. However, they are also expected to provide significant benefits through reduced excess evaporative emissions and running losses. Section A below delineates the types of changes EPA expects to occur in vehicular evaporative control systems, as well as the estimated cost of such changes. Section B presents an estimate of the expected emission reduction. Section C presents the cost effectiveness of these revisions, and Section D presents a discussion of leadtime issues.

The following analyses focus on the impact of the proposed test procedure revisions assuming a 9.0 psi RVP certification fuel, since this RVP level was proposed on August 19, 1987 (52 FR 31274). However, as was the case with the August 1987 NPRM, EPA request comments on the effect of these proposed revisions assuming certification fuel RVPs between 8 and 10.5 psi (the latter value is the current volatility limit in Class C areas).

A. Cost of Vehicle Modifications

EPA believes that the vehicle modifications that would be required to comply with the new evaporative emission test procedures would consist of a canister and purge system enlarged over current evaporative controls. It would use a rear-mounted canister location to minimize total cost, and would likely use a non-pressurized fuel tank system. Due to the potentially large vapor flow rates for some running loss conditions, the evaporative system would likely require a larger vent valve and vapor lines. The evaporative system would also have to be able to manage

larger purge rates than do current systems.

Table 1 lists the changes for a light-duty vehicle certifed with 9 RVP fuel.[4] The costs in Table 1 are incremental to the cost for complying with the changed evaporative-only test procedures of the 1987 gasoline volatility NPRM. As can be seen, the major portion of the cost is for increased canister volume. The total cost ranges from $9.65 for a light-duty vehicle to $13.40 for a light-duty truck.[4] The technology for managing the increased purge that would be required by the revised test procedures is expected to be the same as that proposed in the August 1987 NPRM for purge controls designed to operate with fuels of 11.5 psi RVP.

TABLE 1.—INCREMENTAL COSTS OF ADDING ENHANCED EVAPORATIVE EMISSION CONTROLS (LIGHT-DUTY VEHICLE, 9 RVP)

Item	Required modification	Retail price equivalent
Carbon Canister	Increase volume from 1.3 to 2.7 liters, rear mount.	$3.80
Vapor Line	Increase size	0.20
Vent/Roller Valve	Add	3.80
Purge Valve	Switch to electronic, variable position valve.	1.05
Packaging and Assembly.		0.75
Certification	Added testing cost	0.05
Total Light-Duty Vehicle Cost.		9.65
Total Light-Duty Truck Cost.		13.40
Total Heavy-Duty Vehicle Cost.		11.25

EPA has stated its intention to reduce in-use gasoline RVP to a maximum of 9.0 RVP in Phase II of the federal gasoline volatility control rule. EPA also stated that if a different level of control were later promulgated, it would also expect to change certification test fuel RVP to match the in-use level. In the event that EPA increases the RVP of certification fuel, it is of interest to estimate the costs associated with that scenario.

The most recent available analysis of evaporative system costs for higher RVPs was performed for 11.5 RVP fuel. Since this analysis was performed, EPA has promulgated (54 FR 11868, March 22, 1989) regulations to reduce gasoline RVP to a maximum of 10.5 RVP and we would not now anticipate increasing the RVP of certification fuel above this level under any forseeable circumstances. Therefore, the maximum cost estimates below somewhat overestimate the costs for 10.5 RVP.

The estimated costs were projected to increase with 11.5 RVP test fuel, primarily due to the need for larger canisters. Costs for light-duty vehicles, light-duty trucks and heavy-duty vehicles are $26.70, $37.90 and $34.80 per vehicle, respectively.[4]

B. Emission Reductions

As described earlier, emissions from two types of events are expected to be reduced as a result of the proposed test procedure modifications. The first type of event is diurnal cycles that occur during the elevated temperatures typical of high ozone days. The second event type is vehicle trips, which generate emissions vapors through increases in fuel tank temperature during a drive. These vapors may be generated at a rate high enough to exceed available canister purge capacity and thus be vented through the canister. Currently, vapor generation rates may also be high enough to exceed the flow capacity of fuel tank vapor lines, causing fuel tank pressure to rise above the tank relief valve or fuel cap vent pressure, thus allowing vapors to escape directly to the atmosphere.

As running losses are being purged to the engine, they may also tend to cause some increase in exhaust emissions since the emission control system calibrations may be based upon test conditions where running losses are largely absent. One of the benefits of the test procedure changes in this proposal would be a reduction in these exhaust emission effects. However, neither the existing increase for in-use exhaust emissions nor the benefit resulting from the revised test procedures have been quantified. Therefore, these benefits are not considered in the following analyses. If data become available, and we request comment in this area, estimates may be developed for the final rule.

Developing reliable models of emissions from either of these two types of events, or of evaporative emissions in general, is difficult. Two key difficulties encountered in building these models are the wide range of vehicle characteristics that are encountered, and the complex interactions that exist between vehicle hardware, environmental factors, and vehicle operating modes. EPA has been improving its data base and analytical modes over the past five years to produce current estimates which are much superior to those of the past. Recently, EPA released a new version of its motor vehicle emission factor model, MOBILE4.0, which incorporates many of those improvements. EPA may make further improvements to support the final rulemaking decisions for gasoline volatility and evaporative emission control.

EPA requests comments on the emission estimate presented below, the supporting methodology, and also requests the submission of any available data which could be used to further improve the modeling of evaporative and refueling emissions. In particular, we would find very helpful all data relating to how the proposed regulations would affect each component of emissions (hot-soak; partial, full, and multiple diurnals; and running losses) over the range of in-use conditions and driving patterns.

While the Agency fully expects to incorporate MOBILE4.0 and any new data in future analyses of running losses and other evaporative emissions, such revised analyses are expected to continue to support the need for the changes included in this proposal. Should this not be the case, EPA would revise its proposed approach. Such a version could include modifications to the measures in today's proposal, addition of new measures or deletion of some measures. EPA will make information leading to any substantial revision publicly available and will provide opportunity for comment before taking final action.

Beginning with diurnal emissions, EPA recently performed an analysis of the in-use driving patterns of non-commercial light-duty vehicles and light-duty trucks.[2] Nearly 24 percent of all such vehicles are not driven on any given day, with 16 percent experiencing a multiple-day period without being driven. In addition, roughly 30 percent of all such vehicles experience the entire diurnal temperature rise without any driving-related interruptions of a given day.

EPA's evaporative emission modeling shows that evaporative control systems complying with the August 1987 NPRM, when certified and operated in-use on 9.0 psi RVP fuel, would have no canister capacity left at the end of a high temperature, high-ozone day whether they experience one, two or three Urban Dynamometer Driving Schedule trips per day.[1] This is due to the high rate of vapor generation during hot-soaks and while the engine is running. With the revised procedures being proposed today, sufficient capacity should be available for one entire diurnal, which averages about 28 grams of HC for light-duty vehicles under in-use conditions typical of high ozone days.[5] Nearly all

vehicles experience a partial diurnal each day, even if they are driven. However, the analysis mentioned above shows that 38 percent of the in-use fleet would experience an entire 28 gram diurnal. (This excludes vehicles which have experienced a previous diurnal without any driving in between and whose carbon canisters may not have sufficient capacity for the second straight diurnal).

Thus, 38 percent of all vehicles will experience a 28 gram HC emission reduction on a given day, or 10.6 grams per day for the average vehicle. Assuming the average vehicle is driven 31.05 miles per day, this figure represents 0.34 gram per mile. An analogous figure for the control of diurnal emissions from the average non-commercial light-duty truck would be 0.55 gram per mile of HC control over its lifetime.[5]

Available data for commercial trucks, mostly heavy-duty vehicles, show even larger numbers of vehicles which are not operated during the day, 73 percent on average.[6] Ignoring complete diurnals experienced by trucks driven sometime during the day, the revised procedures should result in the control of 1.44 gram per mile HC over the life of the average heavy-duty vehicle.[5]

Running losses would also be controlled under the revised procedure. Based on limited data on 10 vehicles, the average losses for 9.0 RVP fuel appear to be roughly 0.31 gram per mile (or 9.5 grams per day) and would be experienced by the entire fleet.[5] Since this analysis has been performed, 10 additional cars have been tested by EPA's contractor. A compilation of test data from this ongoing program up through November 9, 1989 has been placed in the docket for this rulemaking. In addition, in the course of developing the MOBILE4.0 emission factors model, the data and EPA composite emission estimates were made available at public workshops and were independently reviewed by representatives from the auto manufacturers, state governments, and others. Materials from these workshops are also available in the docket. Although there is a wide range of emission performance among the test vehicles, neither EPA nor participants in the MOBILE4.0 workshops have been able to establish any easily identifiable vehicle characteristics which significantly influence running loss emissions (such as type of fuel system, tank size, manufacturer, or model year). Instead, emissions appear to depend on more complex factors such as programmed purge rates under a wide range of driving patterns.

EPA solicits comments on its running loss data and appropriate methodologies for developing fleet emissions estimates from those data. In particular, we request comment on whether any technological factors can be isolated which would improve the aggregation of the data for better fleet emissions projections.

Light-duty trucks and heavy-duty vehicles may have larger running losses due to their large fuel tanks. However, due to the lack of test data on these vehicle types, EPA is currently estimating their emissions to be the same as light-duty vehicles. While the goal of the vapor containment requirements described above is to realize maximum achievable control in-use, for the purpose of estimating the regulatory benefits, EPA is conservatively estimating that only 80 percent of the remaining running losses at 9.0 RVP would be controlled.

In the event that EPA increases certification fuel RVP to match potential in-use RVP higher than 9.0, emission benefits would be higher than for the 9.0 RVP scenario. As in the control cost analysis discussed above, the most recent analysis was performed for 11.5 RVP while in-use summer RVPs now do not exceed 10.5 RVP. Therefore, the results described below for 11.5 RVP fuel will overestimate somewhat the maximum reduction under a scenario where certification fuel RVP was increased.

Modeling of evaporative emissions with 11.5 RVP fuel under test and in-use conditions poses additional difficulties, since fuel boiling is likely to occur. Vapor generation rates during fuel boiling are very sensitive to vehicle characteristics, such as the proximity of heat sources to the fuel tank, and available fuel tank cooling. These characteristics vary greatly from vehicle to vehicle, and little data are available to quantify their effect. Because of these considerations, EPA's evaporative emissions models cannot model all emissions from 11.5 RVP fuel to the degree of accuracy described above. (In general, diurnal vapor generation from 11.5 psi RVP fuels does not involve boiling and can be accurately modeled, but some uncertainty exists in the level of canister loading at the start of a diurnal due to large vapor generation rates during simulated driving events.) Subject to these limiations, however, modeling studies indicate that use of 11.5 RVP fuel results in diurnal vapor generation of 0.67 grams per mile for light-duty vehicles.[5] The corresponding values for light-duty trucks and heavy-duty vehicles are 1.07 and 2.81 grams per mile, which are 60 and 320 percent higher, respectively, than for light-duty vehicles. These emissions would be controlled under the revised test procedures.

EPA's limited test data indicate that running losses associated with use of 11.5 RVP fuel are 1.72 grams per mile.[5] Even assuming only 80 percent in-use effectiveness, enhanced control of evaporative emissions would be 1.37 gram per mile of HC reduction for the average vehicle.

Since both the running loss emissions and excess evaporative emissions described above have a substantial effect on total hydrocarbon emission inventories, the Agency has made some preliminary estimates of revised emissions inventories and control program benefits based upon currently available data.[5] The results of this analysis are presented in Table 2. As indicated, incorporation of running losses and excess evaporative emissions increases baseline emissions by about 30 percent over earlier projections. Similarly, emission benefits associated with programs which will control these emissions have also increased. For example, in the original proposals, evaporative and volatility control were estimated to represent a combined emission benefit of about 8 percent in the year 2010. The analogous number calculated for today's proposal is 31 percent. Thus, the potential benefits to be gained from EPA's volatility proposal and from evaporative emissions control would be much greater than previously anticipated.

TABLE 2.—VOC Benefits of Various Programs (Non-Attainment Area Tonnage in Millions)

	1995	2010
Original Baseline Inventory [1] (millions of tons)	6.63	7.88
Revised Baseline (includes running losses and excess evaporative missions, millions of tons)	8.74	10.55
Program Reductions (% of revised base):		
Interim RVP Control to 10.5/9.5/9.0 [2]	12.4%	.....
RVP Control to 9.0/7.8/7.0 [2]	12.6%	25%
Improved Vehicle Evaporative and Running Loss Controls	.....	6%

[1] Figures are from the volatility proposal and represent the base case including the effects of growth and the projected benefits from the Federal motor vehicle emission control program.

[2] RVP levels refer to standards in Class C, B, and A areas, respectively.

C. Cost Effectiveness

The cost effectiveness, or cost per ton of HC controlled in nonattainment areas, of enhanced evaporative controls can be derived from the figures presented in Sections A and B and information contained in the August 1987 NPRM. Since only vehicle controls are involved, a discounted, vehicle lifetime cost effectiveness will be presented. It approximates a long-term analysis, yet is simpler and is considered sufficient to show the cost effectiveness of enhanced evaporative emission control.

Table 3 summarizes the cost effectiveness analysis. Vehicle costs and total emission reductions were taken from the previous sections. The weight penalty was calculated using the same procedure as was used for the August 1987 NPRM.[4] The canister volume necessary for enhanced evaporative systems incremental to excess evaporative control systems was based upon modeling of the additional emissions captured by enhanced evaporative systems.

TABLE 3.—COST EFFECTIVENESS OF ENHANCED EVAPORATIVE EMISSION CONTROL AT 9.0 RVP

	Light-duty vehicle	Light-duty Truck	Heavy-duty Vehicle
Costs & Credits ($)			
Vehicle Modification	9.65	13.40	11.25
Weight Penalty	0.50	1.15	0.60
Fuel Economy Credit	−12.30	−20.65	−38.75
Net Vehicle Cost	−2.15	−6.10	−26.90
Attainment area HC control	−6.35	−10.65	−20.00
Total	−8.50	−16.75	−46.90
Emission Reductions (kg)			
Discounted lifetime	38.5	64.6	121.1
Discounted lifetime non-attainment area	15.4	25.8	48.4
Discounted Cost per metric ton	−$550	−$650	−$970

The value of HC emissions controlled and recycled to the engine, the value of attainment area emission control, and the discounted lifetime emission reduction are all calculated using the methodology of Appendix 6A of the Draft Regulatory Impact Analysis (RIA) associated with the August 1987 volatility NPRM. The discount rate used is 10 percent. The emission reduction value used for the calculations of credits assumes that roughly the same amount of control will occur during the winter months as during the summer months if there were no volatility control regulations. This assumption is based on the fact that lower temperatures are generally offset by higher volatility gasoline; ASTM specifications of 13.5 or 15.0 RVP in most of the country in December, January, and February generally balance lower ambient temperatures, resulting in roughly equal true vapor pressure for the gasoline in the tank and fuel system.

Under summertime volatility controls, we expect that summertime emissions will actually be lower than at other times during the year. Rather than quantify an additional non-summer credit for controlled emissions, EPA has roughly offset the expected underestimation of such non-summer emissions by calculating year-round emissions based on the more severe design-value day (high-ozone day) temperatures rather than average summer temperatures. EPA solicits comments on the two assumptions described above that: (1) True vapor pressure and thus evaporative emissions are roughly the same year-round in the absence of volatility control, and (2) under summer RVP controls, emissions based on high-ozone temperatures can be used to roughly compensate for the expected underestimation of non-summer emissions.

As can be seen, the costs per ton are very low. In fact, the value of the recovered evaporative emissions is greater than the cost of vehicle modification and weight penalty.

Cost effectiveness results with higher RVP certification fuel are not shown. However, an examination of the costs from Section A and the emission reductions from Section B shows that emission reductions increase faster than costs with increased RVP. Thus, the cost effectiveness of the proposed revisions would be even better with 10.5 RVP fuel. However, this does not mean that 10.5 RVP fuel is to be preferred over 9 RVP fuel. The question of what RVP level to use for both certification and in-use fuel was discussed in the original gasoline volatility proposal and will be updated for the final rulemaking to include both running losses and more precise estimates of diurnal emissions. The analysis presented here simply indicates that the proposed test procedure revisions can be justified over a wide range of fuel RVP.

The Agency has conducted a sensitivity study to evaluate possible options auto manufacturers may have in complying with the revised procedures being proposed today. In particular, it may be possible for certain manufacturers to control running losses by increasing canister purge without increasing the canister size. This approach would control running losses, but may not control any excess evaporation emissions. Similarly, by emphasizing vapor control during non-operation, as with some large-canister, low-purge approaches, it is possible that manufacturers could design systems which primarily controlled evaporative emissions but were less effective in controlling running losses.

While such approaches may be practical for vehicle designers, the Agency does not believe that it is practical to separate excess diurnals and running losses a regulatory perspective. For any required degree of control, be it running loss control or excess evaporative emission control, a wide range of possible purge rate and canister size combinations are possible. These vary from low purge rate/large canister size approaches to high purge rate/small canister approaches. Short of a specific design-based standard, which the Agency would find inappropriate, the Agency currently sees no way to develop regulations which would implement improved purge and enlarged canister requirements in two separate steps. In spite of this, the Agency has made some preliminary estimates of this process to conceptually illustrate the

cost effectiveness of these two aspects of evaporative emission control.

Using EPA's evaporative emissions model, the effects of increased purge rates were separated from the effects of a larger canister. The hardware costs of Table 1 were similarly split between purge-related and other costs. When this was done, the control of running losses was slighly more cost effective than the control of excess evaporative emissions. However, both steps showed negative net costs (including attainment area HC credits) and would essentially be as highly cost effective separately as they were when combined (Table 3). (The reader is referred to EPA analyses in the docket for the details.)

The EPA solicits comment on whether it is practical to control running loss emissions and excess evaporative emissions separately. Such comments should include detailed descriptions of alternative test procedures and the impact of such procedures on testing complexity and costs, methodologies for estimating separate control costs and emission reductions and estimates of such costs and emission reductions.

Late in the development of this proposal, EPA performed a new analysis of the hot-soak, diurnal, and running loss emission reductions available from these proposed regulations. In the new analysis, the effect of the proposed improved controls on hot-soak and diurnal emissions is estimatedfrom the distributions of actual emission factor test results on several hundred problem-free vehicles, assuming that most higher-emitting vehicles would be better controlled. The impact on running loss emissions was calculated by assuming an eighty percent reduction from MOBILE4.0 baseline running loss emissions for non-tampered vehicles. These calculations result in updated estimates of 0.10 gram/mile for the reduction in LDV evaporative emissions and 0.39 gram/mile for the reduction in running losses. [7]

When these emission reductions are substituted for the earlier reductions in the cost-effectiveness methodology above, the result remains a negative number (a savings of $456 per metric ton of reduced emissions) and does not affect the Agency's decision to go forward with these proposed regulations. We welcome comment on the updated emission reduction estimates.

D. Leadtime and Effective Date

The August 1987 evaporative emission NPRM called for the original revised evaporative test procedure to take effect beginning with the 1990 model year. Today's proposal is occurring more than two years later, and the procedural revisions and anticipated vehicle modifications are more substantial than those associated with the earlier proposal. Thus, EPA requests comments on how much additional leadtime is needed. These comments are requested over the entire potential range of 8–10.5 psi RVP test fuels.

V. Public Participation

A. Comments and the Public Docket

As in past rulemaking actions, EPA strongly encourages full public participation in arriving at final decisions. In addition to those areas where specific comment has been requested, EPA solicits comments on all aspects of today's proposal from all interested parties. Whenever applicable, full supporting data and detailed analyses should also be submitted to allow EPA to make maximum use of the comments. Commenters are especially encouraged to provide specific suggestions for changes to any aspect of the proposal that they believe needs to be modified or improved and the impacts of such changes on testing burden, control costs, and emission reductions. All comments should be directed to the EPA Air Docket Section, Docket No. A–89–18 (see "ADDRESSES"). Comments will be accepted for 30 days after the public hearing.

While the scope of this proposal is limited in nature, EPA will also accept comments on other aspects of the volatility proposal (52 FR 31274, August 19, 1987) based upon either new information or significant changed circumstances since that proposal was published. This would include comments in light of the Final Rulemaking on Phase I of EPA's volatility program (54 FR 11868, March 22, 1989).

B. Public Hearing

Any person desiring to present testimony at the public hearing (see "DATES") should notify the contact person listed above of such intent at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony.

It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, it will be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing prior to the scheduled hearing date, in order for EPA staff to give such material full consideration. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. If detailed alternative test procedures substantially diffeent from those proposed today are included in the comments, EPA will extend the comment period and make such test procedures available for comment in order to avoid the need for reproposal. All such submittals should be directed to the EPA Air Docket Section, Docket No. A–85–21 (see "ADDRESSES").

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, is hereby designated Presiding Officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

VI. Administrative Designation and Regulatory Analysis

This notice proposes changes to a major proposed regulation. As required under Executive Order 12291, a Draft Regulatory Impact Analysis (RIA) was prepared for the original volatility proposal that included a detailed assessment of the estimated economic and environmental impacts of the proposed regulations. The material supporting this proposal supplements the assessments made in that Draft RIA, and should be reviewed in the context of that document.

This proposal was also submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA response to those comments have been placed in the public docket for this rulemaking.

VII. Corporate Average Fuel Economy

Because these requirements will result in increased vapor recovery, there may be some increase in the fuel efficiency of in-use vehicles which would not be reflected in corporate average fuel economy (CAFE) results. The Agency seeks comments on the extent of this improvement and whether changes might be required in current corporate

average fuel economy test procedures to reflect such an improvement.

VIII. Impact on Small Entities

Section 605 of the Regulatory Flexibility Act requires that the Administrator certify that regulations do not have a significant impact on a substantial number of small entities. I certify that the proposed revisions to the test procedures for evaporative emission control systems and for methanol-fueled vehicles will not have a significant impact on a substantial number of small entities. Manufacturers of methanol-fueled vehicles are not expected to be small. Moreover, revisions to the procedures for evaporative controls are not much different from the original volatility/evaporative/refueling emission proposals for which the Administrator certified that no such impact was expected.

IX. Reporting and Recordkeeping Requirements

Today's notice supplements the original information collection provisions proposed on August 19, 1987 (52 FR 31312) and submitted to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* A copy of the Information Collection Request document (OMB ICR No. 2060–0178) may be obtained by writing Sandy Farmer; Information Policy Branch; U.S. EPA; 401 M Street SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2468.

The information collection requirements proposed in the August 1987 NPRM relate entirely to gasoline RVP enforcement. Because the proposed requirements to certify compliance and to provide EPA with vehicle design information are part of current certification requirements (cleared under OMB ICR No. 2060–0104), EPA does not believe that the vehicle-related changes proposed today will have any measurable additional impact on reporting and recordkeeping burdens to the auto manufacturing industry.

Comments regarding the burden estimate or any other aspect of this collection of information may be sent to the above address, but should also be sent to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2060–0104), 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.

List of Subjects in 40 CFR Part 86

Administrative practice and procedures, Air pollution control, Gasoline, Motor Vehicles, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Authority for the actions proposed in this notice is granted to EPA by sections 202, 206, 207, 208, 211, and 301 of the Clean Air Act (42 U.S.C. 7521, 7525, 7541, 7542, and 7601).

Dated: January 4, 1990.

F. Henry Habicht,

Acting Administrator.

References

1. "PT Model Description and Users Guide," David B. Bartus, U.S. EPA, Standards Development and Support Branch, August 10, 1988.

2. "Trip Patterns Analysis on Days Surrounding Multiple Diurnals," EPA memo from Celia Shih, Operations Research Analyst, Test and Evaluation Branch, to Charles L. Gray, Jr., Director, Emission Control Technology Division, July 27, 1988.

3. "Procedure for Determining Daily Maximum and Diurnal Temperatures," EPA Memo from Mark Wolcott, TEB, to John Anderson, SDSB, September 12, 1988.

4. "Onboard and Evaporative Control System Cost Estimates for the SNPRM," EPA Memo from Jean Schwendeman SDSB, to the Record, December 22, 1988.

5. "Effect of Running Losses and Excess Evaporative Emissions on Future VOC Emission Inventories," EPA Memo from Richard A. Rykowski, SDSB, to the Record, December 22, 1988.

6. "National Truck Trip Information Survey," Dan Blower and Leslie Pettis, University of Michigan Transportation Research Institute, UMTRI Report No. 88–11, March 1988.

7. "Reductions in Evaporative Emissions and Running Losses from Enhanced Vehicle-Based Control," EPA Memo from Alan Stout, ECTD to Charles Gray, Director, ECTD, December 19, 1989.

APPENDIX: TABLE OF CHANGES TO VARIOUS SUBPARTS

Section	Change	Reason
1. Authority, part 86	None	
2. § 86.XXX–8	Add paragraph (e). Standard prohibiting direct release of fuel vapor into the atmosphere during in-use operations.	Modification of evaporative emission control regulations.
3. § 86.XXX–9	Add paragraph (e). Standard prohibiting direct release of fuel vapor into the atmosphere during in-use operations. Delete paragraphs (h)–(j) and update subsequent references.	Do.
4. § 86.XXX–10	Add paragraph (e). Standard prohibiting direct release of fuel vapor into the atmosphere during in-use operations.	Do.
5. § 86.XXX–24	Coordinate paragraph references in § 86.XXX–24 with changes 2, 3, and 4.	Do.
6. § 86.107–XX	Addition of a requirement for access port(s), SHED gas-tightness requirement, Removal of paragraph (a)(8), "Gasoline vapor generating equipment".	Do.
7. § 86.130–XX	Addition of test sequence figure. Time requirements of test sequences shown on the figures.	Do.
8. § 86.131–X	Add specification of 40% tank fill level for themocouple placement. Change wording from "with gasoline vapor" to "not connected to the vehicle fuel tank" at (c).	Do.

APPENDIX: TABLE OF CHANGES TO VARIOUS SUBPARTS—Continued

Section	Change	Reason
9. § 86.132-XX	Require gas cap off when vehicle parked out-of-doors and allow option of gas cap on when vehicle parked in test area, at (a). Remove "For vehicles entering evaporative and/or exhaust emissions testing", at (a)(1)(ii). Remove gasoline vapor generating equipment procedure for canister loading and replace with a manufacturer recommendation for canister loading, at (a)(1)(iii)(A)(*1*). Add purpose of heat builds at (a)(1)(iii)(*2*) to coordinate with (a)(1)(iii)(A)(*2*)(*xi*). Replace reference § 86.078-2 with reference § 86.082-2. Correct "60 ± 2°F" to "at least 58.0°F" at (a)(i)(iii)(A)(*2*) (*viii*). Add "in °F (or in °C for SI units), at (a)(i)(iii)(A)(*2*)(x)..... Change definition for breakthrough at (a)(1)(iii)(A)(*2*)(*xi*). Add "Upon completion of loading of the evaporative canister ..... from the fuel tank", at (a)(i)(iii)(A)(*2*)(*xi*). Add "Vehicle fueling. Within one hour of loading the canister(s) to breakthrough", at (a)(2). Add fuel temperature of 60-72 °F to (a)(2)..... Add "Dynamometer drive" at (b).....	Do.
10. § 86.133-XX	Add procedures substituting first diurnal heat build for existing diurnal test. Add procedures for 2nd diurnal heat build and representative diurnal test.	Do.
11. § 86.138-XX	Add 86.138-XX Incorporate new paragraph (j) requiring gas cap removal. Clarify paragraph (m).....	Do.
12. § 86.1207-XX	Addition of requirement or access port(s), require gas-tightness of SHED, Add "in °F (or in °C for SI units)" to (e)(4). Removal of paragraph (a)(8), "Gasoline vapor generating equipment".	Do.
13. § 86.1230-XX	Addition of test sequence figure. Time requirements of test sequences shown on the figures.	Do.
14. § 86.1231-XX	Change wording from "with gasoline vapor" to "not connected to the vehicle fuel tank".	Do.
15. § 86.1232-XX	For vehicles parked out-of-doors, require gas cap off. Gas cap optionally on when parked indoors, at (a). Remove gasoline vapor generating equipment procedure for loading canisters and replace with a manufacturer recommendation for loading at (a)(1)(iii)(A)(*1*). Add purpose of heat builds to coordinate with (a)(1)(iii)(A)(*2*). Replace reference § 86.078-2 with reference § 86.082-2. Add "in °F (or in °C for SI units)", at (a)(1)(iii)(A)(*2*) (*x*). Change definition of breakthrough, at (a)(1)(iii)(A)(*2*)(*xi*). Add "upon completion of loading of the evaporative canister ..... from the fuel tank", at (a)(1)(iii)(A)(*2*)(*xi*). Add "Vehicle fueling. Within one hour of loading the canister(s) to breakthrough", at (a)(2). Add fuel temperature specification of 60-72 °F to (a)(2). Add "Dynamometer Drive", at (a)(3)..... Add "The vehicle shall be stored for not less than 10 hours nor for more than 35 hours prior to the diurnal heat build", at (b).	Do.
16. § 86.1233-XX	Add procedures substituting first diurnal heat build for existing diurnal test. Add procedures for 2nd diurnal heat build and representative diurnal test.	Do.
17. § 86.1238-XX	Add § 86.1238-XX Incorporate new paragraph (j), requiring gas cap removal. Clarify paragraph (m).....	Do.

For the reasons set forth in the preamble, 40 CFR part 86 is proposed to be amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Sec. 202, 203, 206, 207, 208, 215, and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7601(a).

2. A new § 86.XXX–8 is proposed to be added to subpart A, to read as follows:

§ 86.XXX–8 Emission standards for 19XX and later model year light-duty vehicles.

(a)(1) Exhaust emissions from 19XX and later model year light-duty vehicles shall not exceed:

(i) *Hydrocarbons.* 0.41 gram per vehicle mile (0.255 gram per vehicle kilometer).

(ii) *Carbon monoxide.* 3.4 grams per vehicle mile (2.11 grams per vehicle kilometer).

(iii) *Oxides of nitrogen.* 1.0 gram per vehicle mile (0.629 gram per vehicle kilometer).

(iv) *Particulate emissions* (diesels only). 0.20 gram per vehicle mile (0.124 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty vehicle engine families in the particulate averaging program, provided that vehicles produced for sale in California or designated high-altitude areas may be averaged only within each of these areas. If the manufacturer elects to average diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.087–2.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in subpart B of this part and measured and calculated in accordance with those procedures.

(b)(1) Evaporative emissions from 19XX and later model year gasoline-fueled light-duty vehicles shall not exceed: *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 19XX and later model year gasoline-fueled light-duty vehicle.

(d) [Reserved]

(e) All fuel vapor generated in any 19XX and later model year gasoline-fueled light-duty vehicle during in-use operations, shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge). The only exception to this requirement shall be for emergencies caused by component malfunction or damage.

(f) [Reserved]

(g) Any 19XX and later model year light-duty vehicle that a manufacturer wishes to certify for sale shall meet the emission standards of paragraphs (a) through (e) of this section under both low- and high-altitude conditions as defined in § 86.082–2, except as provided in paragraphs (h) and (i) of this section. Vehicles shall meet emission standards under both low- and high-altitude conditions without manual adjustments or modifications. Any emission control device used to meet emission standards under high-altitude conditions shall initially actuate (automatically) no higher than 4,000 feet above sea level.

(h) A manufacturer may exempt 19XX model year vehicles from compliance at high altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles are not intended for sale at high altitude and if the requirements or paragraphs (h) (1) and (2) of this section are met.

(1) A vehicle configuration shall only be considered eligible for exemption under this paragraph if the requirements of either paragraph (h)(1) (i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio (D/W) and engine speed-to-vehicle-speed ratio (N/V) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation, $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line of lay to the upper right of the line as displayed on the graphs.

(C) The exemption lines is then defined by the equation $N/V = C(0.84\ D/W)^{-0.9}$, where the constant C is the same as that found in paragraph (h)(1)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (h)(1)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (h)(1)(ii) of this subsection to any manufacturer that has exempted vehicle configurations as set forth in paragraph (h)(1)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 miles per hour to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The procedure to be followed in making this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall

also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (h)(1)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraphs (h)(1)(i) (A) and (B) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (h)(1)(iii) of this section.

(2) A vehicle shall only be considered eligible for exemption under this paragraph if at least one configuration of its model type (and transmission configuration in the case of vehicles equipped with manual transmissions, excluding differences due to the presence of overdrive) is certified to meet emission standards under high-altitude conditions as specified in paragraphs (a) through (g) of this section. The Certificate of Conformity (the Certificate) covering any exempted configuration(s) will also apply to the corresponding non-exempt configuration(s) required under this subparagraph. As a condition to the exemption, any suspension, revocation, voiding, or withdrawal of the Certificate as it applies to a nonexempt configuration for any reason will result in a suspension of the Certificate as it applies to the corresponding exempted configuration(s) of that model type, unless there is at least one other corresponding non-exempt configuration of the same model type still covered by the Certificate. The suspension of the Certificate as it applies to the exempted configuration(s) will be terminated when any one of the following occurs:

(i) Another corresponding non-exempt configuration(s) receive(s) coverage under the Certificate; or

(ii) Suspension of the Certificate as it applies to the corresponding non-exempt configuration(s) is terminated; or

(iii) The Agency's action(s), with respect to suspension, revocation, voiding or withdrawal of the Certificate as it applies to the corresponding non-exempt configuration(s), is reversed.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in this paragraph will be considered a violation of section 203(a)(1) of the Clean Air Act.

(4) The manufacturers may exempt 19XX and later model year vehicles from compliance at low altitude with the emission standards set forth in paragraphs (a) and (b) of this section if the vehicles:

(i) Are not intended for sale at low altitude; and

(ii) Are equipped with a unique, high-altitude axle ratio (rear-wheel drive vehicles) or a unique, high-altitude drivetrain (front-wheel drive vehicles) with a higher N/V ratio than other configurations of that model type which are certified in compliance with the emission standards of paragraphs (a) and (b) of this section under low-altitude conditions.

(5) The sale of a vehicle for principal use at low altitude that has been exempted as set forth in paragraph (h)(4) of this section will be considered a violation of section 203(a)(1) of the Clean Air Act.

3. A new § 85.XXX–9 is proposed to be added to subpart A, to read as follows:

§ 86.XXX–9 Emission standards for 19XX and later model year light-duty trucks.

(a)(1) The standards set forth in paragraphs (a) and (b) of this section shall apply to light-duty trucks sold for principal use at other than a designated high-altitude location. Exhaust emissions from 19XX and later model year light-duty trucks shall not exceed:

(i) *Hydrocarbons.* 0.80 gram per vehicle mile (0.5 gram per vehicle kilometer).

(ii)(A) *Carbon monoxide.* 10 grams per vehicle mile (6.2 grams per vehicle kilometer).

(B) 0.50 percent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(C) A manufacturer may elect to include all or some of its light-duty truck engine families in the NO_x averaging program, provided that trucks produced for sale in California or designated high-altitude areas may be averaged only within each of those areas. Diesel and gasoline-fueled engine families may not be averaged together. If the manufacturer elects to average together NO_x emissions of light-duty trucks subject to the standards of paragraphs (a)(1)(iii)(A) and (a)(1)(iii)(B) of this section, its composite NO_x standard applies to the combined fleets of light-duty trucks up to and including, and over, 3,750 lbs loaded vehicle weight included in the average and is calculated as defined in § 86.088–2.

(iv) *Particulate emissions* (diesel light-duty trucks only). 0.26 gram per vehicle mile (0.16 gram per vehicle kilometer). A manufacturer may elect to include all or some of its diesel light-duty truck engine families in the particulate averaging program provided that trucks produced for sale in California or in designated high-altitude areas may be averaged only within each of those areas. If the manufacturer elects to average both diesel light-duty vehicles and diesel light-duty trucks together in the particulate averaging program, its composite particulate standard applies to the combined set of diesel light-duty vehicles and diesel light-duty trucks included in the average and is calculated as defined in § 86.085–2.

(2) The standards set forth in paragraph (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii), and (a)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (a)(1)(ii)(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(b)(1) Evaporative emissions from 19XX and later model year gasoline-fueled light-duty trucks shall not exceed: *Hydrocarbons.* 2.0 grams per test.

(2) The standard set forth in paragraph (b)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) The standards set forth in paragraphs (c) through (e) of this section shall apply to all light-duty trucks. No crankcase emissions shall be discharged into the ambient atmosphere from any 19XX and late model year light-duty truck.

(d) [Reserved]

(e) All fuel vapor generated in any 19XX and later model year gasoline-fueled light-duty truck during in-use operations shall be routed exclusively to the evaporative control system (e.g., to the canister or engine purge). The only exception to this requirement shall be for emergencies caused by component malfunction or damage.

(f)(1) Model year 19XX and later light-duty trucks sold for principal use at a designated high-altitude location shall

be capable of meeting the following exhaust emission standards when tested under high-altitude conditions:

(i) *Hydrocarbons.* 1.0 grams per vehicle mile (0.62 grams per vehicle kilometer):

(ii) *Carbon Monoxide.* (A) 14 grams per vehicle mile (8.7 grams per vehicle kilometer).

(B) 0.50 per cent of exhaust gas flow at curb idle (gasoline-fueled light-duty trucks only).

(iii) *Oxides of nitrogen.* (A) For light-duty trucks up to and including 3,750 lbs loaded vehicle weight, 1.2 grams per vehicle mile (0.75 grams per vehicle kilometer).

(B) For light-duty trucks 3,751 lbs and greater loaded vehicle weight, 1.7 grams per vehicle mile (1.1 grams per vehicle kilometer).

(iv) *Particulate emissions* (diesel light-duty trucks only). 0.26 gram per vehicle mile (0.16 gram per vehicle kilometer).

(2) The standards set forth in paragraph (f)(1)(i), (f)(1)(ii)(A), (f)(1(ii), and (f)(1)(iv) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures. The standard set forth in paragraph (f)(1)(ii))(B) of this section refers to the exhaust emitted at curb idle and measured and calculated in accordance with the procedures set forth in Subpart P of this part.

(g)(1) Evaporative emissions from 19XX and later model year gasoline-fueled light-duty trucks sold for principal use at a designated high-altitude location shall not exceed: *Hydrocarbons.* 2.6 grams per test when tested under high-altitude conditions.

(2) The standard set forth in paragraph (g)(1) of this section refers to a composite sample of the evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(h)(1) Any light-duty truck that a manufacturer wishes to certify for sale at low altitude must be capable of meeting high altitude emission standards (specified in paragraphs (c) through (g) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (h)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities, and

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt 19XX and later model year vehicles from compliance with the emission standards set forth in paragraph (c) through (g) of this section at high-altitude if the vehicles are not intended for sale at high-altitude and if the following requirements are met. A vehicle configuration shall only be considered eligible for exemption if the requirements of either paragraph (k)(2)(i), (ii), (iii), or (iv) of this section are met.

(i) Its design parameters (displacement-to-weight ratio), (D/W) and engine-speed-to-vehicle-speed ratio (N/V)) fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(A) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the gross vehicle weight (GVW) expressed in pounds), and the axis of the ordinate shall be N/V (share (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numercial gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(B) The product line is then defined by the equation $N/V = C(D/W)^{-0.9}$, where the constant, C, is determined by the requirement that all the vehicle data points either fall on the line or lie to the upper right of the line as displayed on the graphs.

(C) The exemption line is then defined by the equation, $N/V = C(0.84\ D/W^{-0.9}$, where the constant, C is the same as that found in paragraph (k)(2)(i)(B) of this section.

(D) The exempted range includes all values of N/V and D/W which simultaneously fall to the lower left of the exemption line as drawn on the graph.

(ii) Its design parameters fall within the alternate exempted range for that manufacturer that year. The alternate exempted range is determined by substituting rated horsepower (hp) for displacement (D) in the exemption procedure described in paragraph (k)(2)(i) of this section and by using the product line $N/V = C(hp/W)^{-0.9}$.

(A) Rated horsepower shall be determined by using the Society of Automotive Engineers Test Procedure J 1349, or any subsequent version of that test procedure. Any of the horsepower determinants within that test procedure may be used, as long as it is used consistently throughout the manufacturer's product line in any model year.

(B) No exemptions will be allowed under paragraph (k)(2)(ii) of this section to any manufacturer that has exempted vehicle configurations as set forth in paragraph (k)(2)(i) of this section.

(iii) Its acceleration time (the time it takes a vehicle to accelerate from 0 to a speed not less than 40 miles per hour and not greater than 50 miles per hour) under high-altitude conditions is greater than the largest acceleration time under low-altitude conditions for that manufacturer for that year. The producer to be followed to be in marking this determination is:

(A) The manufacturer shall list the vehicle configuration and acceleration time under low-altitude conditions of that vehicle configuration which has the highest acceleration time under low-altitude conditions of all the vehicle configurations it will offer for the model year in question. The manufacturer shall also submit a description of the methodology used to make this determination.

(B) The manufacturer shall then list the vehicle configurations and acceleration times under high-altitude conditions of all those vehicle configurations which have higher acceleration times under high-altitude conditions than the highest acceleration time at low altitude identified in paragraph (k)(2)(iii)(A) of this section.

(iv) In lieu of performing the test procedure of paragraph (k)(2)(iii) of this section, its acceleration time can be estimated based on the manufacturer's engineering evaluation, in accordance with good engineering practice, to meet the exemption criteria of paragraph (k)(2)(iii) of this section.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (k)(2) of this section

will be considered a violation of section 203(a)(1) of the Clean Air Act.

4. A new § 86.XXX–10 is proposed to be added to subpart A, to read as follows:

§ 86.XXX–10 Emission standards for 19XX and later model year gasoline-fueled heavy-duty engines and vehicles.

(a)(1) Exhaust emissions from new 19XX and later model year gasoline-fueled heavy-duty engines shall not exceed:

(i) For engines intended for use in all vehicles except as provided in paragraph (a)(3) of this paragraph.

(A) *Hydrocarbons.* 1.1 grams per brake horsepower-hour (0.41 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 14.4 grams per brake horsepower-hour (5.36 grams per megajoule), as measured under transient operating conditions.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(ii) For engines intended for use only in vehicles with a Gross Vehicle Weight Rating of greater then 14,000 pounds,

(A) *Hydrocarbons.* 1.9 grams per brake horsepower-hour (0.71 gram per megajoule), as measured under transient operating conditions.

(B) *Carbon monoxide.* (*1*) 37.1 grams per brake horsepower-hour (13.8 grams per megajoule), as measured under transient operating conditions.

(*2*) *Gasoline-fueled heavy-duty engines utilizing aftertreatment technology.* 0.50 percent of exhaust gas flow at curb idle.

(C) *Oxides of nitrogen.* 6.0 grams per brake horsepower-hour (2.2 grams per megajoule), as measured under transient operating conditions.

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over the operating schedule set forth in paragraph (f)(1) of appendix I to this part, and measured and calculated in accordance with the procedures set forth in subpart N or P.

(3)(i) A manufacturer may certify one or more gasoline-fueled heavy-duty engine configurations intended for use in all vehicles to the emission standards set forth in paragraph (a)(1)(ii) of this paragraph: Provided, that the total model year sales of such configuration(s) being certified to the emission standards in paragraph (a)(1)(ii) of this section represent no more than 5 percent of total model year sales of all gasoline-fueled heavy-duty engines intended for use in vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds by the manufacturer.

(ii) The configurations certified to the emission standards of paragraph (a)(1)(ii) of this section under the provisions of paragraph (a)(3)(i) of this section shall still be required to meet the evaporative emission standards set forth in paragraphs (b)(1)(i)(A) and (b)(2)(i) of this section.

(b)(1) Evaporative emissions from 19XX and later model year gasoline-fueled heavy-duty vehicles shall not exceed:

(i) *Hydrocarbons.* (A) For vehicles with a Gross Vehicle Weight Rating of up to 14,000 pounds, 3.0 grams per test.

(B) For vehicles with a Gross Vehicle Weight Rating of greater than 14,000 pounds, 4.0 grams per test.

(ii) [Reserved]

(2)(i) For vehicles with a Gross Vehicle Weight Rating of up to 26,000 pounds, the standards set forth in paragraph (b)(1) of this section refer to a composite sample of evaporative emissions collected under the conditions set forth in Subpart M and measured in accordance with those procedures.

(ii) For vehicles with a Gross Vehicle Weight Rating of greater than 26,000 pounds, the standard set forth in paragraph (b)(1)(i)(B) of this section refers to the manufacturer's engineering design evaluation using good engineering practice (a statement of which is required in § 86.088–23(b)(4)(ii)).

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any new 19XX or later model year gasoline-fueled heavy-duty engine.

(d) [Reserved]

(e) All fuel vapor generated in any 19XX and later model year gasoline-fueled heavy-duty vehicle during in-use operations shall be routed exclusively to the evaporative control system (e.g., to the canister or engine purge). The only exception to this requirement shall be for emergencies caused by component malfunction or damage.

(f) Every manufacturer of new motor vehicle engines subject to the standards prescribed in this section shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with applicable procedures in subpart N or P of this part to ascertain that such test engines meet the requirements of paragraphs (a) and (c) of this section.

5. A new § 86.XXX–24 is proposed to be added to subpart A to read as follows:

§ 86.XXX–24 Test vehicles and engines.

(a)(1) The vehicles or engines covered by an application for certification will be divided into groupings of engines which are expected to have similar emission characteristics throughout their useful lives. Each group of engines with similar emission characteristics shall be defined as a separate engine family.

(2) To be classed in the same engine family, engines must be identical in all the following respects:

(i) The cylinder bore center-to-center dimensions.

(ii)–(iii) [Reserved]

(iv) The cylinder block configuration (air cooled or water cooled; L–6, 90° V–8, etc.).

(v) The location of the intake and exhaust valves (or ports).

(vi) The method of air aspiration.

(vii) The combustion cycle.

(viii) Catalytic converter characteristics.

(ix) Thermal reactor characteristics.

(x) Type of air inlet cooler (*e.g.*, intercoolers and after-coolers) for diesel heavy-duty engines.

(3)(i) Engines identical in all the respects listed in paragraph (a)(2) of this section may be further divided into different engine families if the Administrator determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(A) The bore and stroke.

(B) The surface-to-volume ratio of the nominally dimensioned cylinder at the top dead center position.

(C) The intake manifold induction port size and configuration.

(D) The exhaust manifold port size configuration.

(E) The intake and exhaust valve sizes.

(F) The fuel system.

(G) The camshaft timing and ignition or injection timing characteristics.

(ii) Light-duty trucks and heavy-duty engines produced in different model years and distinguishable in the respects listed in paragraph (a)(2) of this section shall be treated as belonging to a single engine family if the Administrator requires it, after determining that the engines may be expected to have similar emission deterioration characteristics.

(4) Where engines are of a type which cannot be divided into engine families based upon the criteria listed in paragraphs (a) (2) and (3) of this section, the Administrator will establish families for those engines based upon those features most related to their emission characteristics. Engines that are eligible to be included in the same engine family

based on the criteria in paragraphs (a)(2) and (3)(i) of this section may be further divided into different engine families if the manufacturer determines that they may be expected to have different emission characteristics. This determination will be based upon a consideration of the following features of each engine:

(i) The dimension from the center line of the crankshaft to the center line of the camshaft.

(ii) The dimension from the center line of the crankshaft to the top of the cylinder block head face.

(iii) The size of the intake and exhaust valves (or ports).

(5) The gasoline-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are expected to have similar evaporative emission characteristics throughout their useful life. Each group of vehicles with similar evaporative emission characteristics shall be defined as a separate evaporative emission family.

(6) For gasoline-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative emission family, vehicles must be similar with respect to:

(i) Type of vapor storage device (*e.g.*, canister, air cleaner, crankcase).

(ii) Basic canister design.

(iii) Fuel system.

(7) Where vehicles are of a type which cannot be divided into evaporative emission families based on the criteria listed above, the Administrator will establish families for those vehicles based upon the features most related to their evaporative emission characteristics.

(8)(i) If the manufacturer elects to participate in the Alternative Durability Program, the engine families covered by an application for certification shall be grouped based upon similar engine design and emission control system characteristics. Each of these groups shall constitute a separate engine family group.

(ii) To be classed in the same engine family group, engine families must contain engines identical in all of the following respects:

(A) The combustion cycle.

(B) The cylinder block configuration (air-cooled or water-cooled; L–6, V–8, rotary, etc.)

(C) Displacement (engines of different displacement within 50 cubic inches or 15 percent of the largest displacement and contained within a multidisplacement engine family will be included in the same engine family group).

(D) Catalytic converter usage and basic type (noncatalyst, oxidation catalyst only, three-way catalyst equipped).

(9) Engine families identical in all respects listed in paragraph (a)(8) of this section may be further divided into different engine family groups if the Administrator determines that they expected to have significantly different exhaust emission control system deterioration characteristics.

(10) A manufacturer may request the Administrator to include in an engine family group, engine families in addition to those grouped under the provisions of paragraph (a)(8) of this section. This request must be accompanied by the information the manufacturer believes supports the inclusion of these additional engine families.

(11) A manufacturer may combine into a single engine family group those light-duty vehicle and light-duty truck engine families which otherwise meet the requirement of paragraphs (a)(8) through (10) of this section.

(12) The gasoline-fueled heavy-duty vehicles covered by an application for certification will be divided into groupings of vehicles on the basis of physical features which are expected to affect evaporative emissions. Each group of vehicles with similar features shall be defined as a separate evaporative emission family.

(13) For gasoline-fueled heavy-duty vehicle to be classed in the same evaporative emission family, vehicles must be identical with respect to:

(i) Method of fuel/air metering (*i.e.*, carburetion versus fuel injection).

(ii) Carburetor bowl fuel volume, within a 10 cc range.

(14) For gasoline-fueled heavy-duty vehicles to be classed in the same evaporative emission control system, vehicles must be identical with respect to:

(i) Method of vapor storage.

(ii) Method of carburetor sealing.

(iii) Method of air cleaner sealing.

(iv) Vapor storage working capacity, within a 20g range.

(v) Number of storage devices.

(vi) Method of purging stored vapors.

(vii) Method of venting the carburetor during both engine off and engine operation.

(viii) Liquid fuel hose material.

(ix) Vapor storage material.

(15) Where gasoline-fueled heavy-duty vehicles are types which cannot be divided into evaporative emission family-control system combinations based on the criteria listed above, the Administrator will establish evaporative emission family-control system combinations for those vehicles based on features most related to their evaporative emission characteristics.

(b) Emission data. (1) *Emission-data vehicles.* Paragraph (b)(1) of this section applies to light-duty vehicle and light-duty truck emission-data vehicles.

(i) Vehicles will be chosen to be operated and tested for emission data based upon engine family, one test vehicle will be selected based on the following criteria: The Administrator shall select the vehicle with the heaviest equivalent test weight (including options) within the family. Then within that vehicle the Administrator shall select, in the order listed, the highest road-load power, largest displacement, the transmission with the highest numerical final gear ratio (including overdrive), the highest numerical axle ratio offered in that engine family and the maximum fuel flow calibration.

(ii) The Administrator shall select one additional test vehicle from within each engine family. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family. If all vehicles within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iii) Within an engine family and exhaust emission control system, the manufacturer may alter any emission-data vehicle (or other vehicles such as including current or previous model year emission-data vehicles, fuel economy data vehicles, and development vehicles provided they meet emission-data vehicles' protocol) to represent more than one selection under paragraph (b)(1) (i), (ii), (iv), or (vii) of this section.

(iv) If the vehicles selected in accordance with paragraphs (b)(1) (i) and (ii) of this section do not represent each engine-system combination, then one vehicle of each engine-system combination not represented will be selected by the Administrator. The vehicle selected shall be the vehicle expected to exhibit the highest emissions of those vehicles remaining in the engine family.

(v) For high-altitude exhaust emission compliance for each engine family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the vehicle expected to exhibit the highest emissions from the nonexempt vehicles selected in accordance with paragraphs (b)(1) (ii), (iii), and (iv) of this section or,

(B) In lieu of testing vehicles according to paragraph (b)(1)(v)(A) of this section, a manufacturer may provide a statement in its application for

certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) That all light-duty vehicles not exempt under § 86.XXX–8(h) comply with the emission standards at high altitude, and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements, and that all light-duty trucks sold at low altitude, which are not exempt under § 86.XXX–9(h)(2), are capable of being modified to meet high-altitude standards.

(vi) If 90 percent or more of the engine family sales will be in California, a manufacturer may substitute emission-data vehicles selected by the California Air Resources Board criteria for the selections specified in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section.

(vii)(A) Vehicles of each evaporative emission family will be divided into evaporative emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative emissions, from within each evaporative family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative testing has already been completed on the vehicle expected to exhibit the highest evaporative emissions for the evaporative family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative emission control system then the Administrator will select the highest expected evaporative emission vehicle from within the unrepresented evaporative system.

(viii) For high-altitude evaporative emission compliance for each evaporative emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraph (b)(1)(vii) (B) or (C) of this section which is expected to have the highest level of evaporative emissions when operated at high altitude, or

(B) In lieu of testing vehicles according to paragraph (b)(1)(vii)(A) of this section, a manufacturer may provide a statement in its application for certification that based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate,

(*1*) That all light-duty vehicles not exempt under § 86.XXX–8(h) comply with the emission standards at high altitude, and

(*2*) That light-duty trucks sold for principal use at designated high-altitude locations comply with the high-altitude emission requirements, and that all light-duty trucks sold at low altitude, which are not exempt under § 86.XXX–9(h)(2), are capable of being modified to meet high-altitude standards.

(ix) Vehicles selected under paragraph (b)(1)(v)(A) of this section may be used to satisfy the requirements of (b)(1)(viii)(A) of this section.

(x)–(xi) [Reserved].

(xii) Vehicles selected under paragraphs (b)(1)(v)(A) or (b)(1)(vii)(A) of this section may be used to satisfy the requirements of (b)(1)(xiii)(A) of this section.

(xiii) (*Light-duty trucks only*): (A) The manufacturer may reconfigure any of the low-altitude emission-data vehicles to represent the vehicle configuration required to be tested at high altitude.

(B) The manufacturer is not required to test the reconfigured vehicle at low altitude.

(2) *Gasoline-fueled heavy-duty emission-data engines.* Paragraph (b)(2) of this section applies to gasoline-fueled heavy-duty engines.

(i)-(ii) [Reserved].

(iii) The Administrator shall select a maximum of two engines within each engine family based upon features indicating that they may have the highest emission levels of the engine in the engine family as follows:

(A) The Administrator shall select one emission-data engine first based on the largest displacement within the engine family. Then within the largest displacement the Administrator shall select, in order listed, highest fuel flow at the speed of maximum rated torque, the engine with the most advanced spark timing, largest evaporative and/or refueling emissions canister, no EGR or lowest actual flow air pump.

(B) The Administrator shall select one additional engine, from within each engine family. The engine selected shall be the engine expected to exhibit the highest emissions of those engines remaining in the engine family. If all engines within the engine family are similar the Administrator may waive the requirements of this paragraph.

(iv) If the engines selected in accordance with paragraphs (b)(2) (ii) and (iii) of this section do not represent each engine displacement-exhaust emission control system combination, then one engine of each engine displacement-exhaust emission control system combination not represented shall be selected by the Administrator.

(v) Within an engine family/displacement/control system combination, the manufacturer may alter any emission-data engine (or other engine including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraph (b)(2)(iii) of this section.

(3) *Diesel heavy-duty emission-data engines.* Paragraph (b)(3) of this section applies to diesel heavy-duty emission-data vehicles.

(i) Engines will be chosen to be run for emission data based upon engine family groupings. Within each engine family, the requirements of this paragraph must be met.

(ii) Engines of each engine family will be divided into groups based upon their exhaust emission control systems. One engine of each engine system combination shall be run for smoke emission data and gaseous emission data (including data for particulate matter). Either the complete gaseous emission test or the complete smoke test may be conducted first. Within each combination, the engine that features the highest fuel feed per stroke, primarily at the speed of maximum rated torque and secondarily at rated speed, will usually be selected. If there are military engines with higher fuel rates than other engines in the same engine system combinations, then one military engine shall also be selected. The engine with the highest fuel feed per stroke will usually be selected.

(iii) The Administrator may select a maximum of one additional engine within each engine-system combination based upon features indicating that it may have the highest emission levels of the engines of that combination. In selecting this engine, the Administrator will consider such features as the injection system, fuel system, compression ratio, rated speed, rated horsepower, peak torque speed, and peak torque.

(iv) Within an engine family control system combination, the manufacturer may alter any emission-data engine (or other engine such as including current or previous model year emission-data engines and development engines provided they meet the emission-data engines' protocol) to represent more than one selection under paragraphs (b)(3) (ii) and (iii) of this section.

(c) Durability data. (1) *Light-duty vehicle durability-data vehicles.* Paragraph (c)(1) of this section applies

to light-duty vehicle durability-data vehicles.

(i) A durability-data vehicle will be selected by the Administrator to represent each engine-system combination. The vehicle selected shall be of the engine displacement with the larget projected sales volume of vehicles with that control-system combination in that engine family and will be designated by the Administrator as to transmission type, fuel system, inertia weight class, and test weight.

(ii) A manufacturer may elect to operate and test additional vehicles to represent any engine-system combination. The additional vehicles must be of the same engine displacement, transmission type, fuel system and inertia weight class as the vehicle selected for that engine-system combination in accordance with the provisions of paragraph (c)(1)(i) of this section. Notice of an intent to operate and test additional vehicles shall be given to the Administrator no later than 30 days following notification of the test fleet selection.

(2) *Light-duty trucks.* Paragraph (c)(2) of this section applies to vehicles, engines, subsystems, or components used to establish exhaust emissions deterioration factors for light-duty trucks.

(i) The manufacturer shall select the vehicles, engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether vehicles, engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use vehicles, based on good engineering judgment.

(ii) [Reserved]

(3) *Heavy-duty engines.* Paragraph (c)(3) of this section applies to engines, subsystems, or components used to establish exhaust emission deterioration factors for heavy-duty engines.

(i) The manufacturer shall select the engines, subsystems, or components to be used to determine exhaust emission deterioration factors for each engine-family control system combination. Whether engines, subsystems, or components are used, they shall be selected so that their emissions deterioration characteristics may be expected to represent those of in-use engines, based on good engineering judgment.

(ii) [Reserved]

(d) For purposes of testing under § 86.084–26 (a)(9) or (b)(11), the Administrator may require additional emission-data vehicles (or emission-data engines) and durability-data vehicles (light-duty vehicles only) identical in all material respects to vehicles (or engines) selected in accordance with paragraphs (b) and (c) of this section, provided, that the number of vehicles (or engines) selected shall not increase the size of either the emission-data fleet by more than 20 percent or one vehicle (or engine), whichever is greater.

(e)(1) Any manufacturer whose projected sales for the model year in which certification is sought is less than:

(i) 2,000 gasoline-fueled light-duty vehicles, or

(ii) 2,000 diesel light-duty vehicles, or

(iii) 2,000 gasoline-fueled light-duty trucks, or

(iv) 2,000 diesel light-duty trucks, or

(v) 2,000 gasoline-fueled heavy-duty engines, or

(vi) 2,000 diesel heavy-duty engines,

may request a reduction in the number of test vehicles (or engines) determined in accordance with the foregoing provisions of this section. The Administrator may agree to such lesser number as he determines would meet the objectives of this procedure.

(2) Any manufacturer may request to certify engine families with combined total sales of fewer than 10,000 light-duty vehicles, light-duty trucks, and heavy-duty engines utilizing assigned deterioration factors prescribed by the Administrator. The assigned deterioration factors shall be applied only to entire engine families.

(f) In lieu of testing an emission-data or durability vehicle (or engine) selected under paragraph (b) or (c) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data, evaporative emission data and/or refueling emission data, as applicable on a similar vehicle (or engine) for which certification has been obtained or for which all applicable data required under § 86.XXX–23 has previously been submitted.

(g)(1) This paragraph applies to light-duty vehicles and light-duty trucks, but does not apply to the production vehicles selected under paragraph (h) of this section.

(2)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, may be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item shall be included in the curb weight computation of each vehicle available with that item in that carline, within that engine-system combination.

(ii) When it is expected that 33 percent or less of the carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) no weight for that item will be added in computing the curb weight for any vehicle in the carline, within that engine-system combination, unless that item is standard equipment on the vehicle.

(iii) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(iv) Optional items weighing less than three pounds per item need not be considered.

(3)(i) Where it is expected that more than 33 percent of a carline, within an engine-system combination, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items shall actually be installed (unless excluded under paragraph (g)(3)(ii) of this section) on all emission-data and durability-data vehicles of that carline, within that engine-system combination, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions are: air conditioning, power steering, power brakes, and other items determined by the Administrator.

(ii) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (g)(3)(i) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(iii) The weight of the options shall be included in the design curb weight and also represented in the weight of the test vehicles.

(iv) The engineering evaluation, including any test data, used to support the deletion of optional equipment from the test vehicles, shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(4) Where it is expected that 33 percent or less of a carline within an engine-system combination will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item shall not be installed on any emission-data vehicle or durability-data vehicle of that carline, within that engine-system combination, unless that item is standard equipment on that vehicle or

specifically required by the Administrator.

(h) *Alternative durability program durability-data vehicles.* This section applies to light-duty vehicle and light-duty truck durability-data vehicles selected under the Alternative Durability Program described in § 86.085–13.

(1) In order to update the durability data to be used to determine a deterioration factor for each engine family group, the Administrator will select durability-data vehicles from the manufacturer's production line. Production vehicles will be selected from each model year's production for those vehicles certified using the Alternative Durability Program procedures.

(i) The Administrator shall select the production durability-data vehicle designs from the designs that the manufacturer offers for sale. For each model year and for each engine family group, the Administrator may select production durability-data vehicle designs of equal number to the number of engine families within the engine family group, up to a maximum of three vehicles.

(ii) The production durability-data vehicles representing the designs selected in paragraph (h)(1)(i) of this section will be randomly selected from the manufacturer's production. The Administrator will make these random selections unless the manufacturer (with prior approval of the Administrator) elects to make the random selections.

(iii) The manufacturer may select additional production durability-data vehicle designs from within the engine family group. The production durability-data vehicles representing these designs shall be randomly selected from the manufacturer's production in accordance with paragraph (h)(1)(ii) of this section.

(iv) For each production durability-data vehicle selected under paragraph (h)(1) of this section, the manufacturer shall provide to the Administrator (before the vehicle is tested or begins service accumulation) the vehicle identification number. Before the vehicle begins service accumulation the manufacturer shall also provide the Administrator with a description of the durability-data vehicle as specified by the Administrator.

(v) In lieu of testing a production durability-data vehicle selected under paragraph (h)(1) of this section, and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data from a production vehicle of the same configuration for which all applicable data has previously been submitted.

(2) If, within an existing engine family group, a manufacturer requests to certify vehicles of a new design, engine family, emission control system, or with any other durability-related design difference, the Administrator will determine if the existing engine family group deterioration factor is appropriate for the new design. If the Administrator cannot make this determination or deems the deterioration factor not appropriate, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles with the new design under the provisions of paragraph (h)(1) of this section.

(3) If a manufacturer requests to certify vehicles of a new design that the Administrator determines are a new engine family group, the Administrator shall select preproduction durability-data vehicles under the provisions of paragraph (c) of this section. If vehicles are then certified using the new design, the Administrator may select production vehicles of that design under the provisions of paragraph (h)(1) of this section.

(6) A new § 86.107–XX is proposed to be added to Subpart B, to read as follows:

§ 86.107–XX Sampling and analytical system; evaporative emissions.

(a) Component description of evaporative emissions sampling system. The following components will be used in evaporative emissions sampling systems for testing under this subpart.

(1) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. The sides of the enclosure shall be equipped with one or more ports to provide access to the fuel tank filler cap(s) of test vehicles. Access port sealing devices shall be capable of maintaining gas-tightness of the enclosure at all times. When sealed, the enclosure shall be gas tight in accordance with § 86.117. Interior surfaces must be impermeable to hydrocarbons. One surface should be of flexible, impermeable material to allow for minor volume changes resulting from temperature changes. Wall design should promote maximum dissipation of heat and if artificial cooling is used, interior surface temperatures shall not be less than 68.0 °F (20.0 °C).

(2) *Evaporative emission hydrocarbon analyzers.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting the following performance requirements expressed as a function of C_{std}, where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

(i) Stability of the analyzer shall be better than 0.01 C_{std} ppm at zero and span over a 15-minute period on all ranges used.

(ii) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm on all ranges used.

(3) *Evaporative emission hydrocarbon data recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal or hot soak. The recording may be by means of a strip chart potentiomometric recorder, by use of an on-line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each diurnal or hot soak along with the time elapsed between initiation and completion of each soak.

(4) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ±3.0 °F (1.7 °C) of the following equation:

$$F = T_o + 0.4t$$

or for SI units:

$$C = T_o + (2/9)t$$

where:

F = Temperature in °F
C = Temperature in °C
t = Time since start of test in minutes

T_o = Initial temperature in °F (or in °C for SI units)

(5) *Temperature recording system.* Strip chart recorder(s) or an automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature during the evaporative emissions test. The temperature recorder or data processor shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ± 15s and capable of resolving temperature to ±0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ± 3.0 °F (1.7 °C). The recorder (data processor) shall have a time accuracy of ± 15s and a precision of ± 15s. Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending four inches (nominally) into the enclosure at a height of 3.0± 0.5 ft (0.9 ± 0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(6) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(7) *Mixing blower.* One or more small blowers or fans with a total capacity of 200 to 1,000 cfm shall be used to mix the contents of the enclosure during evaporative emission testing. No portion of the air stream shall be directed towards the vehicle. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of the test.

7. A new § 86.130–XX is proposed to be added to Subpart B, to read as follows:

§ 86.130–XX Test sequence; general requirements.

The test sequence shown in Figures BXX–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by the test vehicle shall not be less than 68.0 °F (20.0 °C) nor more than 86.0 °F (30.0 °C). The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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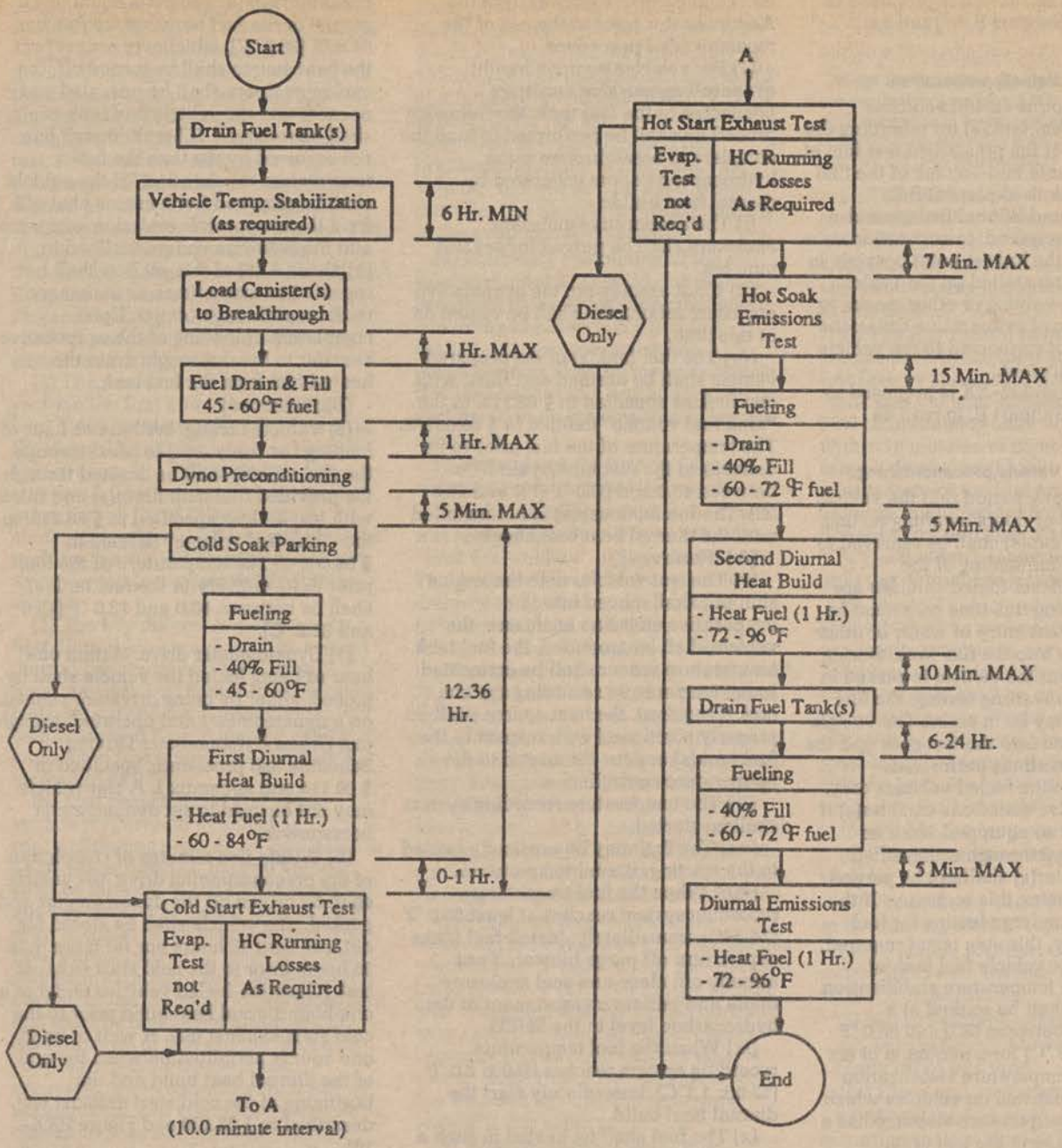

Figure Bxx-10. Test Sequence

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8. A new § 86.131–XX is proposed to be added to Subpart B, to read as follows:

§ 86.131–XX Vehicle preparation.

(a) For gasoline-fueled vehicles, prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel when the tank is 40 percent full.

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(c) Provide valving or other means to allow loading of evaporative emissions canister(s) not connected to the vehicle fuel tank, if present.

9. A new § 86.132–XX is proposed to be added to Subpart B, to read as follows:

§ 86.132–XX Vehicle preconditioning.

(a) During any period that the vehicle is parked out-of-doors awaiting testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the canister(s) (Diesel-fueled vehicles are exempt). During this time care must be taken to prevent entry of water or other contaminates into the fuel tank. During any period that the vehicle is parked in the test area awaiting testing, the fuel tank cap(s) may be in place. The vehicle shall be moved into the test area and the following operations performed:

(1) For gasoline fueled vehicles only, the evaporative emissions canister(s) if the vehicle is so equipped, shall be loaded to breakthrough as specified below. Canister(s) shall not be purged prior to beginning this sequence. If the vehicle is to undergo testing for fuel economy only, this step is not required.

(i) Drain the vehicle fuel tank(s).

(ii) Vehicle temperature stabilization. The vehicle shall be soaked at a temperature between 68.0 and 86.0 °F (20.0 and 30.0 °C) for a minimum of six hours. This temperature stabilization step may be omitted on vehicles which are already temperature stabilized as a result of storage in the test area.

(iii) Canister(s) loading to breakthrough.

Note: If at any time the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(A) *Evaporative emissions canister(s).* For vehicles equipped with evaporative emissions canisters, the canister(s) shall be loaded to breakthrough.

(*1*) For vehicles with evaporative emissions canisters which are not connected to the fuel tank, the manufacturers shall recommend a procedure for loading these canisters and shall receive approval from the Administrator prior to the use of the recommended procedure.

(*2*) For vehicles equipped with evaporative emission canisters connected to the fuel tank, the following procedure shall be performed to load the canisters to breakthrough using hydrocarbon vapors generated by diurnal heat builds:

(*i*) The evaporative emission enclosure shall be purged for several minutes.

(*ii*) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(*iii*) The fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45.0 and 60.0 °F (7.2 and 15.6 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(*iv*) [Reserved]

(*v*) The test vehicle, with the engine shut off, shall moved into the evaporative emission enclosure, the vehicle shall be grounded, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(*iv*) The temperature recording system shall be started.

(*vii*) The fuel may be artifically heated to the starting diurnal temperature.

(*viii*) When the fuel temperature recording system reaches at least 58.0 °F (14.0 °C), immediately: install fuel tanks cap(s); turn off purge blower, if not already off; close and seal enclosure doors and initiate measurement of the hydrocarbon level in the SHED.

(*ix*) When the fuel temperature recording system reaches 60.0± 2.0 °F (15.6± 1.1°C), immediately start the diurnal heat build.

(*x*) The fuel shall be heated in such a way that its temperature change conforms to the following function to within +3.0 °F (%2.2 °C):

$$F = T_0 + 0.4t$$

for SI units,

$$C = T_0 + (2/9)t$$

where:

F = fuel temperature, °F.
C = fuel temperature, °C.
t = time since beginning of test, minutes.
T_0 = initial temperature in °F (°C for SI units)

(*xi*) As soon as breakthrough occurs (breakthrough is defined as the point at which the cumulative quantity of hydrocarbons emitted into the SHED during all heat builds of the load-to-breakthrough procedure is equal to 2.0 grams) or the fuel temperature reaches 84.0 °F (28.9 °C), whichever occurs first, the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If breakthrough has not occurred by the time the fuel temperature reaches 84.0 °F, the vehicle shall be removed (with engine shut off) from the evaporative emission enclosure and the entire procedure outlined in (a))1)(iii)(A)(2) of this section shall be repeated as many times as necessary until breakthrough occurs. Upon completion of loading of the evaporative canister to breakthrough, drain the heated fuel from the fuel tank.

(B) [Reserved]

(2) Vehicle fueling. Within one hour of loading the canister(s) to breakthrough the fuel tank(s) shall be drained through the provided fuel tank drain(s) and filled with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 60.0 and 72.0 °F (15.6 and 22.2 °C).

(3) Dynamometer drive. Within one hour of being fueled the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one Urban Dynamometer Driving Schedule test procedure, specified in § 86.115 and appendix I. A test vehicle may not be used to set dynamometer horsepower.

(b) Within five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked. The vehicle shall be stored for not less than 12 hours nor for more than 36 hours prior to the cold start exhaust test. (Gasoline-fueled vehicles undergo a one-hour diurnal heat build prior to the cold start exhaust test. A wait of up to one hour is permitted between the end of the diurnal heat build and the beginning of the cold start exhaust test, described in § 86.130 and Figure BXX–10).

(c) Vehicles to be tested for evaporative emissions shall be processed in accordance with procedures in §§ 86.133 through 86.138. Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.133 through 86.137.

10. A new § 86.133–XX is proposed to be added to subpart B, to read as follows:

§ 86.133–XX Diurnal breathing loss test.

(a) Overview. (1) Vehicles shall be required to undergo two diurnal heat builds and a diurnal breathing loss test for the purpose of demonstrating

compliance with evaporative emissions standards. The first of these heat builds occurs after vehicle preparation and preconditioning, and before the start of the exhaust emission test. The second diurnal heat build occurs after completion of the hot soak emissions test. Evaporative emissions are not measured during either of these first two diurnal heat builds, so an evaporative emissions enclosure is not required. The diurnal breathing loss test occurs directly following the second heat build. Evaporative emissions shall be measured during this final test, so it shall be performed in an evaporative emissions enclosure.

(2) The procedure to be used to perform the first and second diurnal heat builds is essentially identical with the diurnal breathing loss test, except that evaporative emissions are not measured. This procedure is presented in paragraph (c) of this section. A similar procedure shall be carried out to perform the diurnal breathing loss test, as presented in paragraph (d) of this section.

(3) The key difference between the first diurnal heat build, and the second diurnal heat build and the diurnal breathing loss test is that the latter two tests are carried out with an initial fuel temperature of 72.0 °F instead of 60.0 °F, and a final fuel temperature of 96.0 °F instead of 84.0 °F.

(b) Test sequence. (1) Following vehicle preparation and vehicle preconditioning procedures described in §§ 86.131 and 86.132, the test vehicle shall be allowed to soak for a period of not less than 12 nor more than 36 hours prior to the exhaust emission test. The first diurnal heat build shall start not less than 10 or more than 35 hours after the end of the preconditioning procedure and shall be conducted according to paragraph (c) of this section. Since no evaporative measurements are necessary, an evaporative enclosure is not required. The start of the exhaust emissions test, described in § 86.137 shall follow the end of the first diurnal heat build within one hour.

(2) Gasoline-fueled vehicles to be tested for exhaust emissions only shall undergo the first diurnal heat build. Since no evaporative measurements are necessary, an evaporative enclosure is not required.

(3) Within 15 minutes of completing the hot soak emissions test, described in § 86.138, the second diurnal heat build shall be initiated. The second diurnal heat build shall be conducted according to paragraph (c) of this section. Since no evaporative measurements are necessary, an evaporative enclosure is not required. Within 10 minutes of completing the second diurnal heat build, draining of the heated fuel from the fuel tank(s) shall be initiated. The vehicle shall be temperature stabilized at a temperature of 68.0 to 86.0 °F (20.0 to 30.0 °C) for not less than 6 hours nor more than 24 hours between fuel draining and filling to the "tank fuel volume" defined in § 86.082–2 which precedes the diurnal breathing loss test in the evaporative enclosure.

(4) Following completion of the second diurnal heat build, the diurnal breathing loss test shall be conducted according to paragraph (d) of this section. Evaporative emissions measurements shall be measured during this test, so that this procedure shall be performed in an evaporative emissions enclosure.

(c) *Procedures for first and second diurnal heat builds.* (1) [Reserved]

(2) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45.0 and 60.0 °F (7.2 and 15.6 °C) for the first fueling associated with the first heat build and between 60.0 and 72.0 °F (15.6 and 22.2 °C) for the second fueling associated with the second heat build. The fuel tank temperature sensor shall be connected to the temperature recording system and the temperature recording system turned on, and the heat source shall be properly positioned with respect to the fuel tanks(s) and/or connected to the temperature controller. Heating of the fuel shall then be started.

(3) When the fuel temperature recording system shows that the fuel has reached 58.0 °F (14.0 °C) for the first heat build or 70.0 °F (21.1 °C) for the second heat build immediately install the fuel tank cap(s). Heating of the fuel shall continue and be controlled so that its rate of temperature rise conforms with the equation specified in paragraph (d)(10) of this section.

(4) As soon as the temperature recording system shows that the temperature of the fuel has reached 84.0±2.0 °F (28.9±1.9 °C) for the first heat build or 96.0±2.0 °F (35.6± 1.0 °C) for the second heat build, heating of the fuel shall be stopped and the test vehicle shall proceed to the next step in the test sequence (*i.e.*, after the first diurnal heat build, to the cold start exhaust test and after the second diurnal heat build, to fuel draining in preparation for the diurnal breathing loss test).

(d) *Procedures for diurnal breathing loss test:* The diurnal breathing loss test shall be carried out according to the following provisions:

(1) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

Note: If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(2) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(3) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(4) The fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.113, to the "tank fuel volume" defined in § 86.082–2. Fuel tank draining shall be initiated within 10 minutes of completion of the second diurnal heat build. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 60.0 and 72.0 °F (15.6 and 22.2 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(5) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the test vehicle windows and luggage compartments shall be opened, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(6) The temperature recording system shall be started.

(7) The fuel may be artificially heated to the starting diurnal temperature.

(8) When the fuel temperature recording system reaches at least 70.0 °F (21.1 °C), immediately:

(i) Install fuel tank cap(s).

(ii) Turn off purge blowers, if not already off at this time.

(iii) Close and seal enclosure doors.

(9) When the fuel temperature recording system reaches 72.0±1.1 °C), immediately:

(i) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0.0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143.

(ii) Record barometric pressure reading. This is the initial (time=0.0 minutes) barometric pressure. P_{bi}, required in § 86.143.

(iii) Record enclosure ambient temperature. This is the initial (time=0.0 minutes) enclosure ambient temperature, T_i, required in § 86.143.

(iv) Start diurnal heat build and record time. This commences the 60.0±2.0 minute test period.

(10) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±3.0 °F (±1.6 °C):

$F = T_o + 0.4t$

for SI units,

$C = T_o + (2/9)t$

where:

F = fuel temperature, °F
C = fuel temperature, °C
t = time since beginning of test, minutes.
T_o = initial temperature in °F (or in °C for SI units)

After 60.0±2.0 minutes of heating, the fuel temperature rise shall be 24.0±1.0 °F (13.3±0.5 °C).

(11) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the diurnal test.

(12) The end of the diurnal breathing loss test occurs 60.0±2.0 minutes after the heat build begins, paragraph (d)(9)(iv). Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time=60.0 minutes) hydrocarbon concentration, C_{HCf}, required in § 86.143. The time (or elapsed time) of this analysis shall be recorded.

(i) Record barometric pressure reading. This is the final (time=60.0 minutes) barometric pressure, P_{bf}, required in § 86.143.

(ii) Record enclosure ambient temperature. This is the final (time=60.0 minutes) enclosure ambient temperature, T_f, required in § 86.143.

(13) The heat source shall be turned off and the enclosure doors unsealed and opened.

(14) The heat source shall be moved away from the vehicle, if required, and/or disconnected from the temperature controller, the fuel tank temperature sensor shall be disconnected from the temperature recording system, the test vehicle windows and the luggage compartments may be closed and the test vehicle, with the engine shut off, shall be removed from the evaporative emission enclosure.

(15) For vehicles with multiple tanks, the largest tank shall be designated as the primary tank and shall be heated in accordance with the procedure described in paragraph (10) of this section. All other tanks shall be designated as auxiliary tanks and shall undergo a similar heat build such that the fuel temperature shall be within ±3.0 °F (1.6 °C) of the primary tank.

11. A new § 86.138–XX is proposed to be added to Subpart B, to read as follows:

§ 86.138–XX Hot-soak test.

The hot-soak evaporative emission test shall be conducted immediately following the hot transient exhaust emission test.

(a) Prior to the completion of the hot-start transient exhaust emission sampling period, the evaporative emissions enclosure shall be purged for several minutes.

(b) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(c) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(d) Upon completion of the hot transient exhaust emission sampling period, the vehicle engine compartment cover shall be closed, the cooling fan shall be moved, the vehicle shall be disconnected from the dynamometer and exhaust sampling system, and then driven at minimum throttle to the vehicle entrance of the enclosure.

(e) The vehicle's engine must be stopped before any part of the vehicle enters the enclosure. The vehicle may be pushed or coasted into the enclosure.

(f) The test vehicle windows and luggage compartments shall be opened, if not already open.

(g) The temperature recording system shall be started and the time of engine shut off shall be noted on the evaporative emission hydrocarbon data recording system.

(h) The enclosure doors shall be closed and sealed within two minutes of engine shutdown and within seven minutes after the end of the exhaust emission test.

(i) The 60.0±0.5 minute hot soak begins when the enclosure doors are sealed. The enclosure atmosphere shall be analyzed and recorded at this time. This is the initial (time=0.0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143.

(j) Utilizing the access port(s) in the side of the enclosure, the fuel tank cap(s) shall be removed for a period of not less than 5 seconds nor longer than 20 seconds to relieve any pressure in the tank and then be reinstalled and tightened. This operation shall be completed within five minutes of engine shutdown.

(k) The test vehicle shall be permitted to soak for a period of one hour (60.0±0.5 minutes) in the enclosure.

(l) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the test.

(m) The end of the hot-soak evaporative test occurs 60.0±0.5 minutes after the enclosure doors are sealed, as specified in paragraph (i) of this section. Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time=60.0 minutes) hydrocarbon concentration, C_{HCf}, required in § 86.143. The elapsed time of this test shall be recorded.

12. A new § 86.1207–XX is proposed to be added to subpart M, to read as follows:

§ 86.1207–XX Sampling and analytical system; evaporative emissions.

(a) Component description of evaporative emissions sampling system. The following components will be used in evaporative emissions sampling systems for testing under this subpart.

(1) *Evaporative emission measurement enclosure.* The enclosure shall be readily sealable, rectangular in shape, with space for personnel access to all sides of the vehicle. The sides of the enclosure shall be equipped with one or more ports to provide access to the fuel tank filler cap(s) of test vehicles. Access port sealing devices shall be capable of maintaining gas-tightness of the enclosure at all times. When sealed, the enclosure shall be gas tight in accordance with § 86.1217. Interior surfaces must be impermeable to hydrocarbons. One surface should be of flexible, impermeable material to allow for minor volume changes resulting from temperature changes. Wall design should promote maximum dissipation of heat and if artificial cooling is used, interior surface temperatures shall not be less than 68.0 °F (20.0 °C).

(2) *Evaporative emission hydrocarbon analyzers.* A hydrocarbon analyzer utilizing the hydrogen flame ionization principle (FID) shall be used to monitor the atmosphere within the enclosure. Instrument bypass flow may be returned to the enclosure. The FID shall have a response time to 90 percent of final reading of less than 1.5 seconds, and be capable of meeting the following performance requirements expressed as a function of C_{std}, where C_{std} is the specific enclosure hydrocarbon level, in ppm, corresponding to the evaporative emission standard:

(i) Stability of the analyzer shall be better than 0.01 C_{std} ppm at zero and span over a 15-minute period on all ranges used.

(ii) Repeatability of the analyzer, expressed as one standard deviation, shall be better than 0.005 C_{std} ppm on all ranges used.

(3) *Evaporative emission hydrocarbon data recording system.* The electrical output of the FID shall be recorded at least at the initiation and termination of each diurnal or hot soak. The recording may be by means of a strip chart potentiometric recorder, by use of an on-

line computer system or other suitable means. In any case, the recording system must have operational characteristics (signal to noise ratio, speed of response, etc.) equivalent to or better than those of the signal source being recorded, and must provide a permanent record of results. The record shall show a positive indication of the initiation and completion of each diurnal or hot soak along with the time elapsed between initiation and completion of each soak.

(4) *Tank fuel heating system.* The tank fuel heating system shall consist of a heat source and a temperature controller. A typical heat source is a 2000 W heating pad. Other sources may be used as required by circumstances. The temperature controller may be manual, such as a variable voltage transformer, or may be automated. The heating system must not cause hot spots on the tank wetted surface which could cause local overheating of the fuel. Heat must not be applied to the vapor in the tank above the liquid fuel. The temperature controller must be capable of controlling the fuel tank temperature during the diurnal soak to within ÷3.0 °F (1.7 °C) of the following equation:

$$F = T_o + 0.4t$$

or for SI units:

$$C = T_o + (2/9)t$$

where:
F = Temperature in °F
C = Temperature in °C
t = Time since start of test in minutes
T_o = Initial temperature in °F (or in °C for SI units)

(5) *Temperature recording system.* Strip chart recorder(s) or an automatic data processor shall be used to record enclosure ambient and vehicle fuel tank temperature during the evaporative emissions test. The temperature recorder or data processor shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ± 15s and capable of resolving temperature to ± 0.75 °F (0.42 °C). The temperature recording system (recorder and sensor) shall have an accuracy of ± 3.0 °F (1.7 °C). The recorder (data processor) shall have a time accuracy of ± 15s and a precision of ± 15s. Two ambient temperature sensors, connected to provide one average output, shall be located in the enclosure. These sensors shall be located at the approximate vertical centerline of each side wall extending four inches (nominally) into the enclosure at a height of 3.0±0.5 ft (0.9±0.2 m). The vehicle fuel tank temperature sensor shall be located in the fuel tank so as to measure the temperature of the prescribed test fuel at the approximate mid-volume of the fuel. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature.

(6) *Purge blower.* One or more portable or fixed blowers shall be used to purge the enclosure. The blowers shall have sufficient flow capacity to reduce the enclosure hydrocarbon concentration from the test level to the ambient level between tests. Actual flow capacity will depend upon the time available between tests.

(7) *Mixing blower.* One or more blowers or fans with a total capacity of 250 to 750 cfm per 1000 ft ^{3} of enclosure volume shall be used to mix the contents of the enclosure during evaporative emission testing. The mixing blower(s) shall be arranged such that a uniform concentration is maintained. Maintenance of uniform concentrations throughout the enclosure is important to the accuracy of the test.

13. A new § 86.1230–XX is proposed to be added to subpart M, to read as follows:

§ 86.1230–XX Test sequence; general requirements.

The test sequence shown in Figure MXX–10 shows the steps encountered as the test vehicle undergoes the procedures subsequently described to determine conformity with the standards set forth. Ambient temperature levels encountered by thetest vehicle shall not be less than 68.0 °F (20.0 °C) nor more than 86.0 °F (30.0 °C). The temperatures monitored during testing must be representative of those experienced by the test vehicle. The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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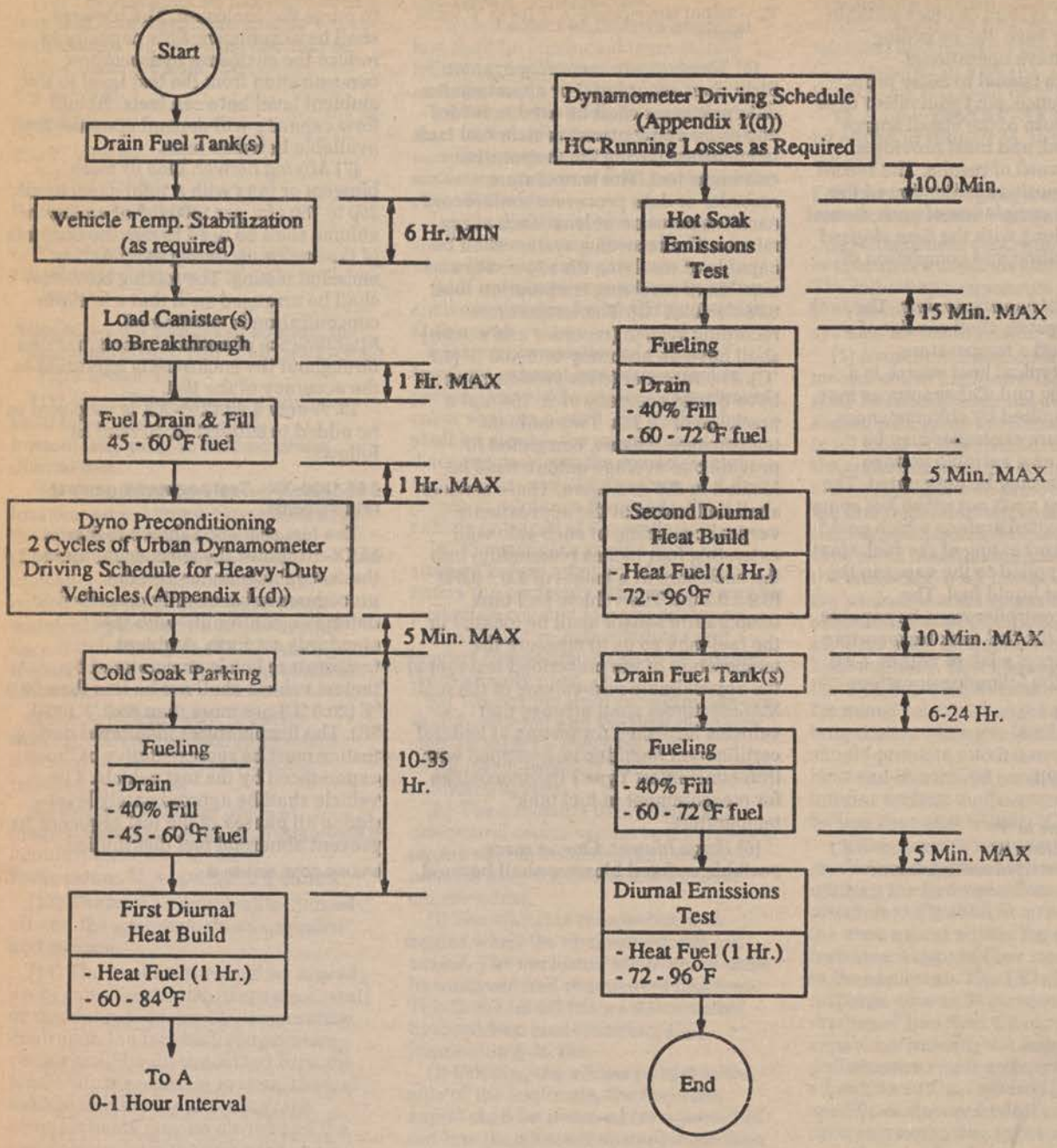
Start
Drain Fuel Tank(s)
Vehicle Temp. Stabilization (as required)
6 Hr. MIN
Load Canister(s) to Breakthrough
1 Hr. MAX
Fuel Drain & Fill 45 - 60°F fuel
1 Hr. MAX
Dyno Preconditioning 2 Cycles of Urban Dynamometer Driving Schedule for Heavy-Duty Vehicles (Appendix 1(d))
5 Min. MAX
Cold Soak Parking
Fueling
- Drain
- 40% Fill
- 45 - 60°F fuel
10-35 Hr.
First Diurnal Heat Build
- Heat Fuel (1 Hr.)
- 60 - 84°F
To A 0-1 Hour Interval
Dynamometer Driving Schedule (Appendix 1(d))
HC Running Losses as Required
10.0 Min.
Hot Soak Emissions Test
15 Min. MAX
Fueling
- Drain
- 40% Fill
- 60 - 72°F fuel
5 Min. MAX
Second Diurnal Heat Build
- Heat Fuel (1 Hr.)
- 72 - 96°F
10 Min. MAX
Drain Fuel Tank(s)
6-24 Hr.
Fueling
- 40% Fill
- 60 - 72°F fuel
5 Min. MAX
Diurnal Emissions Test
- Heat Fuel (1 Hr.)
- 72 - 96°F
End

14. A new § 86.1231–XX is proposed to be added to subpart M, to read as follows:

§ 86.1231–XX Vehicle preparation.

(a) Prepare the fuel tank(s) for recording the temperature of the prescribed test fuel at the approximate mid-volume of the fuel when the tank is 40 percent full.

(b) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle.

(c) Provide valving or other means to allow loading of evaporative emissions canister(s) not connected to the vehicle fuel tank, if present.

(d)(1) Any vapor storage device which adsorbs HC vapors and subsequently releases them to the engine induction system during vehicle operation shall be subjected to a minimum of 30 load-purge cycles or the equivalent thereof (4,000 miles or more of actual in-use vehicle service accumulation shall be considered equivalent). One load-purge cycle shall be accomplished by conducting one of the following procedures:

(i) *Vehicle procedure.* Park a fully-warm vehicle (a vehicle that has been driven for at least 15 minutes) for a time period of at least 3 hours. Fill the fuel tank(s) with test fuel, as specified in § 86.1213, to the prescribed "tank fuel volume" as defined in § 86–082–2. Test fuel shall be at room temperature. The vehicle shall then be driven through at least one cycle of the HDV reference (transient) urban dynamometer driving schedule.

(ii) *Laboratory procedure.* Flow gasoline vapors into a pre-purged vapor storage device until at least 10 percent of the input HC mass flow rate is passing through the device. Purge the device with a volume of air which has a temperature no higher than that which would be drawn through the device if it were installed on the test vehicle and the vehicle was operated according to the HDV reference (transient) urban dynamometer driving schedule. The vapor flow rate, the method used to generate the vapors, the air flow rate, and the air temperature shall be recorded. If pre-blended gas is used, then the composition and characteristics of the gas shall be recorded.

(2) Ten load-purge cycles accumulated immediately prior to testing shall be conducted according to the method in paragraph (d)(1)(i) of this section. The preceding 20 cycles (minimum) shall be conducted according to either of the methods in paragraph (d)(1)(i) or (ii) of this section.

15. A new § 86.1232–XX is proposed to be added to subpart M, to read as follows:

§ 86.1232–XX Vehicle preconditioning.

(a) During any period that the vehicle is parked out-of-doors awaiting testing, the fuel tank cap(s) shall be removed to prevent unusual loading of the canister(s). During this time care must be taken to prevent entry of water or other contaminates into the fuel tank. During any period that the vehicle is parked in the test area awaiting testing, the fuel tank cap(s) may be in place. The vehicle shall be moved into the test area and the following operations performed:

(1) The evaporative emissions canister(s), if the vehicle is so equipped, shall be loaded to breakthrough as specified below. Canister(s) shall not be purged prior to beginning this sequence.

(i) Drain the vehicle fuel tank(s).

(ii) Vehicle temperature stabilization. The vehicle shall be soaked at a temperature between 68.0 and 86.0 °F (20.0 and 30.0 °C) for a minimum of six hours. This temperature stabilization step may be omitted on vehicles which are already temperature stabilization as a result of storage in the test area.

(iii) Canister(s) loading to breakthrough.

Note: If at any time the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(A) *Evaporative emissions canister(s).* For vehicles equipped with evaporative emissions canisters, the canister(s) shall be loaded to breakthrough.

(*1*) For vehicles with evaporative emissions canisters which are not connected to the fuel tank, the manufacturers shall recommend a procedure for loading these canisters and shall receive approval by the Administrator prior to the use of the recommended procedure.

(*2*) For vehicles equipped with evaporative emission canisters connected to the fuel tank, the following procedure shall be performed to load the canisters to breakthrough using hydrocarbon vapors generated by diurnal heat builds:

(*i*) The evaporative emission enclosure shall be purged for several minutes.

(*ii*) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(*iii*) The fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45.0 and 60.0 °F (7.2 and 15.6 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(*iv*) [Reserved]

(*v*) The test vehicle, with the engine shut off, shall be moved into the evaporative emission enclosure, the vehicle shall be grounded, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(*vi*) The temperature recording system shall be started.

(*vii*) The fuel may be artificially heated to the starting diurnal temperature.

(*viii*) When the fuel temperature recording system reaches at least 58.0 °F (14.0 °C), immediately: install fuel tanks cap(s); turn off purge blower, if not already off; close and seal enxlosure doors and initiate measurement of the hydrocarbon level in the SHED.

(*ix*) When the fuel temperature recording system reaches 60.0±2.0 °F (15.6±1.1°C), immediately start the diurnal heat build.

(*x*) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ±3.0 °F (%2.2 °C):

$$F = T_o + 0.4t$$

for SI units,

$$C = T_o + (2/9)t$$

where:
F = fuel temperature, °F.
C = fuel temperature, °C.
t = time since beginning of test, minutes.
T_o = initial temperature in °F (or in °C for SI units)

(*xi*) As soon as breakthrough occurs (canister breakthrough is defined as the point at which the cumulative quantity of hydrocarbons emitted into the SHED during all heat builds of the load-to-breakthrough procedure is equal to 2.0 grams) or the fuel temperature reaches 84.0 °F (28.9 °C), whichever occurs first, the heat source shall be turned off, the enclosure doors shall be unsealed and opened, and the vehicle fuel tank cap(s) shall be removed. If breakthrough has not occurred by the time the fuel temperature reaches 84.0 °F, the vehicle shall be removed (with engine shut off) from the evaporative emission enclosure and the entire procedure outlined in (a)(1)(iii)(A)(*2*) of this section shall be repeated as many times as necessary until breakthrough occurs. Upon completion of loading of the evaporative canister to breakthrough, drain the heated fuel from the fuel tank.

(2) Vehicle fueling. Within one hour of loading the canister(s) to breakthrough the fuel tank(s) shall be drained through the provided fuel tank(s) drain(s) and filled with test fuel, as specified in § 86.082.1213, to the tank fuel volume" defined in § 86.082–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 60.0 and 72.0 °F (15.6 and 22.2 °C).

(3) Dynamometer drive. Within one hour of being fueled the vehicle shall be placed, either by being driven or pushed, on a dynamometer and operated through one HDV Urban Dynamometer Driving Schedule test procedure, described in § 86.1215 and appendix I. A test vehicle may not be used to set dynamometer horsepower.

(b) Whin five minutes of completion of the preconditioning drive, the vehicle shall be driven off the dynamometer and parked, and the engine turned off. The vehicle may be pushed to its parking location after its engine has been turned off. The vehicle shall be stored for not less than 10 hours nor for more than 35 hours prior to the diurnal heat build.

16. A new § 86.1233–XX is proposed to be added to subpart M, to read as follows:

§ 86.1233–XX Diurnal breathing loss test.

(a) *Overview.* (1) Vehicles shall be required to undergo two diurnal heat builds and a diurnal breathing loss test for the purpose of demonstrating compliance with evaporative emissions standards. The first of these heat builds occurs after vehicle preparation and preconditioning, and before the start of vehicle operation. The second diurnal heat build occurs after completion of the hot soak emissions test. Evaporative emissions are not measured during either of these first two diurnal heat builds, so an evaporative emissions enclosure is not required. The diurnal breathing loss test occurs directly following the second heat build. Evaporative emissions shall be measured during this final test, so it shall be performed in an evaporative emissions enclosure.

(2) The procedure to be used to perform the first and second diurnal heat builds is essentially identical with the diurnal breathing loss test, except that evaporative emissions are not measured. This procedure is presented in paragraph (c) of this section. A similar procedure shall be carried out to perform the diurnal breathing loss test, as presented in paragraph (d) of this section.

(3) The key difference between the first diurnal heat build, and the second diurnal heat build and the diurnal breathing loss test is that the latter two tests are carried out with an initial fuel temperature of 72.0 °F instead of 60.0 °F, and a final fuel temperature of 96 °F instead ot 84 °F.

(b) *Test sequence.* (1) Following vehicle preparation and vehicle preconditioning procedures described in §§ 86.1231 and 86.1232, the test vehicle shall be allowed to soak for a period of not less than 12 nor more than 36 hours prior to vehicle operation. The first diurnal heat build shall start not less than 10 or more than 35 hours after the end of the preconditioning procedure and shall be conducted according to paragraph (c) of this section. Since no evaporative measurements are necessary, an evaporation enclosure is not required. The start of vehicle operation, described in § 86.1237 shall follow the end of the first diurnal heat build within one hour.

(2) Within 15 minutes of completing the hot soak emissions test, described in § 86.1238, the second diurnal heat build shall be initiated. The second diurnal heat build shall be conducted according to paragraph (c) of this section. Since no evaporative measurements are necessary, an evaporative enclosure is not required. Within 10 minutes of completing the second diurnal heat build, draining of the heated fuel from the fuel tank(s) shall be initiated. The vehicle shall be temperature stabilized at a temperature of 68.0 °F to 86.0 °F (20.0 to 30.0 °C) for not less than 6 hours nor more than 24 hours between fuel draining and filling to the "tank fuel volume" which preceeds the diurnal breathing loss test in the evaporative enclosure.

(3) Following completion of the second diurnal heat build, the diurnal breathing loss test shall be conducted according to paragraph (d) of this section. Evaporative emissions measurements shall be measured during this test, so that this test shall be performed in an evaporative emissions enclosure.

(c) *Procedures for first and second diurnal heat builds.* (1) [Reserved]

(2) Drain the fuel tank(s) and fill with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 45.0 and 60.0 °F (7.2 and 15.6 °C) for the first fueling associated with the first heat build and between 60.0 and 72.0 °F (15.6 and 22.2 °C) for the second fueling associated with the second heat build. The fuel tank temperature sensor shall be connected to the temperature recording system and the temperature recording system turned on, and the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller. Heating of the fuel shall then be started.

(3) When the fuel temperature recording system shows that the fuel has reached 58.0 °F (14.0 °C) for the first heat build or 70.0 °F (21.0 °C) for the second heat build immediately install the fuel tank cap(s). Heating of the fuel shall continue and be controlled so that its rate of temperature rise conforms with the equation specified in paragraph (d)(10) of this section.

(4) As soon as the temperature recording system shows that the temperature of the fuel has reached 84.0±2.0 °F (28.9±1.9 °C) for the first heat build or 96.0±2.0 °F (35.6±1.0 °C) for the second heat build, heating of the fuel shall be stopped and the test vehicle shall proceed to the next step in the test sequence (*i.e.*, after the first diurnal heat build, to the vehicle operation step, and after the second diurnal heat build, to fuel draining in preparation for the diurnal breathing loss test).

(d) *Procedures for diurnal breathing loss test.* The diurnal breathing loss test shall be carried out according to the following procedures.

(1) The evaporative emission enclosure shall be purged for several minutes immediately prior to the test.

Note: If at anytime the hydrocarbon concentration exceeds 15,000 ppm C the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(2) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(3) If not already on, the evaporative enclosure mixing fan shall be turned on at this time.

(4) The fuel tank(s) of the prepared vehicle shall be drained and filled with test fuel, as specified in § 86.1213, to the "tank fuel volume" defined in § 86.082–2. Fuel tank draining shall be initiated within 10 minutes of completion of the second diurnal heat build. The temperature of the fuel prior to its delivery to the fuel tank(s) shall be between 60.0 and 72.0 °F (15.6 and 22.2 °C). The fuel tank cap(s) is not installed until the diurnal heat build begins.

(5) The test vehicle, with the engine shut off shall be moved into the evaporative emission enclosure, the test vehicle windows and any storage compartments shall be opened, the fuel tank temperature sensor shall be connected to the temperature recording system, and, if required, the heat source shall be properly positioned with respect to the fuel tank(s) and/or connected to the temperature controller.

(6) The temperature recording system shall be started.

(7) The fuel may be artificially heated to the starting diurnal temperature.

(8) When the fuel temperature recording system reaches at least 70.0 °F (21.1 °C), immediately:

(i) Install fuel tank cap(s).

(ii) Turn off purge blowers, if not already off at this time.

(iii) Close and seal enclosure doors.

(9) When the fuel temperature recording system reaches 72.0±2.0 °F (21.1± 1 °C), immediately:

(i) Analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time = 0.0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243.

(ii) Record barometric pressure reading. This is the initial (time = 0.0 minutes) barometric pressure, P_{bi}, required in § 86.1243.

(iii) Record enclosure ambient temperature. This is the initial (time = 0.0 minutes) enclosure ambient temperature, T_i, required in § 86.1243.

(iv) Start diurnal heat build and record time. This commences the 60.0±2.0 minutes test period.

(10) The fuel shall be heated in such a way that its temperature change conforms to the following function to within ± 3.0 °F (± 1.6 °C):

$$F = T_o + 0.4t$$

for SI units,

$$C = T_o + (2/9)t$$

where:

F = fuel temperature, °F

C = fuel temperature, °C

t = time since beginning of test, minutes.

T_o = initial temperature in °F (or in °C for SI units)

After 60.0±2.0 minutes of heating, the fuel temperature rise shall be 24.0 ± 1.0 °F (12.3 ± 0.5 °C).

(11) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the diurnal test.

(12) The end of the diurnal breathing loss test occurs 60.0±2.0 minutes after the heat build begins, paragraph (10)(iv). Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time = 60 minutes) hydrocarbon concentration, C_{HCf}, required in § 86.1243. The time (or elapsed time) of this analysis shall be recorded.

(i) Record barometric pressure reading. This is the final (time = 60.0 minutes) barometric pressure, P_{bf}, required in § 86.1243.

(ii) Record enclosure ambient temperature. This is the final (time = 60.0 minutes) enclosure ambient temperature, T_f, required in § 86.1243.

(13) The heat source shall be turned off and the enclosure doors unsealed and opened.

(14) The heat source shall be moved away from the vehicle, if required, and/or disconnected from the temperature controller, the fuel tank temperature sensor shall be disconnected from the temperature recording system, the test vehicle windows and any storage compartments may be closed and the test vehicle, with the engine shut off, shall be removed from the evaporative emission enclosure.

(15) For vehicles with multiple tanks, the largest tank shall be designated as the primary tank and shall be heated in accordance with the procedure described in paragraph (10) of this section. All other tanks shall be designated as auxiliary tanks and shall undergo a similar heat build such that the fuel temperature shall be within ± 3.0 °F (1.6 °C) of the primary tank.

17. A new § 86.1238–XX is proposed to be added to subpart M, to read as follows:

§ 86.1238–XX Hot-soak test.

The hot-soak evaporative emission test shall be conducted immediately following vehicle operation.

(a) Prior to the completion of vehicle operation, the evaporative emissions enclosure shall be purged for several minutes.

(b) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the test.

(c) If not already on, the evaporative enclosure mixing fan(s) shall be turned on at this time.

(d) Upon completion of vehicle operation, the vehicle engine compartment cover shall be closed, the cooling fan shall be moved, the vehicle shall be disconnected from the dynamometer and exhaust sampling system, and then driven at minimum throttle to the vehicle entrance of the enclosure.

(e) The vehicle's engine must be stopped before any part of the vehicle enters the enclosure. The vehicle may be pushed or coasted into the enclosure.

(f) The test vehicle windows and any storage compartments shall be opened, if not already open.

(g) The temperature recording system shall be started and the time of engine shut off shall be noted on the evaporative emission hydrocarbon data recording system.

(h) The enclosure doors shall be closed and sealed within four minutes of engine shutdown and within ten minutes after the end of vehicle operation.

(i) The 60.0±0.5 minute hot soak begins when the enclosure doors are sealed. The enclosure atmosphere shall be analyzed and recorded at this time. This is the initial (time = 0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.1243.

(j) Utilizing the access port(s) in the side of the enclosure, the fuel tank caps(s) shall be removed for a period of not less than 5 seconds nor longer than 20 seconds to relieve any pressure in the tank and then be reinstalled and tightened. This operation shall be completed within five minutes of engine shutdown.

(k) The test vehicle shall be permitted to soak for a period of one hour (60.0±0.5 minutes) in the enclosure.

(l) The FID hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the test.

(m) The end of the hot-soak evaporative test occurs 60.0±0.5 minutes after the enclosure doors are sealed, as specified in paragraph (i) of this section. Analyze the enclosure atmosphere for hydrocarbons and record. This is the final (time = 60.0 minutes) hydrocarbon concentration, C_{HCf}, required in § 66.1243. The elapsed time of this test shall be recorded.

[FR Doc. 90–1069 Filed 1–18–90; 8:45 am]

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federal register

Friday
January 19, 1990

Part III

General Services Administration

41 CFR Chapter 301

Federal Travel Regulations; Maximum Per Diem Rates; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 6]

RIN 3090-AD44

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates should be updated to provide for the reimbursement of subsistence expenses of Federal employees on official travel. This rule increases the maximum lodging allowances in certain existing per diem localities and adds new per diem localities.

DATES: This final rule is effective January 21, 1990, and applies for travel (including travel incident to a change of official station) performed on or after January 21, 1990.

FOR FURTHER INFORMATION CONTACT: Susan May, Travel Management Divison (FBT), Washington, DC 20406, telephone FTS 557-1253 or commercial (703) 557-1253.

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.

For the reasons set out in the preamble, title 41, chapter 301 of the Code of Federal Regulations is amended as set forth below.

CHAPTER 301—TRAVEL ALLOWANCES

1. Appendix A to chapter 301 is revised to read as follows:

Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS

The maximum rates listed below are prescribed under § 301-7.2 of this regulation for reimbursement of subsistence expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The MI&E rate shown in column (b) is a fixed amount allowed for meals and incidental expenses related to subsistence. The per diem payment calculated in accordance with Part 301-7 for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c).

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
CONUS, Standard rate		$40		$26		$66
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, under certain specified travel circumstances and for certain relocation subsistence allowances. See Parts 301-7, 302-2, 302-4, and 302-5 of this title.)						
ALABAMA						
Anniston	Calhoun	41		26		67
Birmingham	Jefferson	50		26		76
Gulf Shores	Baldwin	46		26		72
Huntsville	Madison	48		26		74
Mobile	Mobile	45		26		71
Montgomery	Montgomery	44		26		70
Sheffield	Colbert	63		26		89
ARIZONA						
Chinle	Apache	48		26		74
Flagstaff/Page	Coconino	51		26		77
Kayenta	Navajo	61		26		87
Phoenix/Scottsdale	Maricopa	57		26		83
Prescott	Yavapai	48		26		74
Sierra Vista	Cochise	43		26		69
Tucson	Pima County; Davis-Monthan AFB	51		26		77
Yuma	Yuma	45		26		71
ARKANSAS						
Fort Smith	Sebastian	44		26		70
Helena	Phillips	47		26		73
Hot Springs	Garland	47		26		73
Little Rock	Pulaski	48		26		74
CALIFORNIA						
Chico	Butte	48		26		74
Death Valley	Inyo	89		34		123
El Centro	Imperial	47		26		73
Eureka	Humboldt	44		26		70
Fresno	Fresno	50		26		76
Herlong	Lassen	53		26		79
Los Angeles	Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordinance Test Station, China Lake.	86		34		120
Modesto	Stanislaus	54		26		80
Monterey	Monterey	71		26		97
Napa	Napa	54		26		80
Oakland	Alameda, Contra Costa & Marin	64		34		98
Palm Springs	Riverside	72		34		106
Redding	Shasta	53		26		79

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
Sacramento	Sacramento	54		34		88
San Diego	San Diego	73		34		107
San Francisco	San Francisco	78		34		112
San Jose	Santa Clara	57		34		91
San Luis Obispo	San Luis Obispo	53		34		87
San Mateo	San Mateo	66		34		100
Santa Barbara	Santa Barbara	77		34		111
Santa Cruz	Santa Cruz	72		34		106
Santa Rosa	Sonoma	54		26		80
South Lake Tahoe	El Dorado	57		34		91
Stockton	San Joaquin	48		26		74
Tahoe City	Placer	46		34		80
Vallejo	Solano	54		26		80
Victorville/Barstow	San Bernardino	49		26		75
Visalia	Tulare	60		26		86
West Sacramento	Yolo	50		26		76
Yosemite Nat'l Park	Mariposa	68		34		102
COLORADO						
Aspen	Pitkin	81		34		115
Boulder	Boulder	61		34		95
Colorado Springs	El Paso	50		26		76
Denver	Denver, Adams, Arapahoe and Jefferson	65		34		99
Durango	La Plata	52		26		78
Glenwood Springs	Garfield	45		26		71
Gunnison	Gunnison	43		26		69
Keystone/Silverthorne	Summit	54		34		88
Pagosa Springs	Archuleta	48		26		74
Steamboat Springs	Routt	48		26		74
Vail	Eagle	86		34		120
CONNECTICUT						
Bridgeport/Danbury	Fairfield	71		26		97
Hartford	Hartford and Middlesex	60		34		94
New Haven	New Haven	67		26		93
New London/Groton	New London	62		26		88
Putnam/Danielson	Windham	63		26		89
Salisbury	Litchfield	53		34		87
DELAWARE						
Dover	Kent	48		26		74
Lewes	Sussex	50		26		76
Wilmington	New Castle	69		26		95
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) (see also Maryland and Virginia.)		93		34		127
FLORIDA						
Altamonte Springs	Seminole	62		26		88
Bradenton	Manatee	60		26		86
Cocoa Beach	Brevard	50		26		76
Daytona Beach/Ormond Beach/New Smyrna	Volusia	50		26		76
Fort Lauderdale	Broward	62		26		88
Fort Myers	Lee	63		26		89
Fort Pierce	Saint Lucie	48		26		74
Fort Walton Beach	Okaloosa	50		26		76
Gainesville	Alachua	48		26		74
Jacksonville	Duval County; Naval Station Mayport	46		26		72
Key West	Monroe	102		34		136
Kissimmee	Osceola	54		26		80
Lakeland	Polk	41		26		67
Miami	Dade	60		34		94
Naples	Collier	68		26		94
Orlando	Orange	54		26		80
Panama City	Bay	50		26		76
Pensacola	Escambia	46		26		72
Punta Gorda	Charlotte	62		26		88
Saint Augustine	Saint Johns	51		26		77
Sarasota	Sarasota	54		26		80
Stuart	Martin	68		26		94
Tallahassee	Leon	46		26		72
Tampa/St. Petersburg	Hillsborough and Pinellas	52		26		78
Vero Beach	Indian River	50		26		76
West Palm Beach	Palm Beach	68		34		102
GEORGIA						
Albany	Dougherty	51		26		77
Athens	Clarke	43		26		69
Atlanta	Clayton, De Kalb, Fulton and Cobb	74		34		108
Augusta	Richmond	44		26		70
Brunswick	Glynn	44		26		70
Columbus	Muscogee	45		26		71
Lawrenceville	Gwinnett	46		26		72
Savannah	Chatham	43		26		69

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
St. Marys	Camden County; The Naval Submarine Base, Kings Bay.	46		26		72
Waycross	Ware	43		26		69
IDAHO						
Boise	Ada	46		26		72
Coeur d'Alene	Kootenai	43		26		69
Ketchum/Sun Valley	Blaine	56		26		82
Pocatello	Bannock	45		26		71
ILLINOIS						
Alton	Madison	48		26		74
Champaign/Urbana	Champaign	49		26		75
Chicago	Du Page, Cook and Lake	89		26		123
Danville	Vermilion	46		26		72
Dixon	Lee	45		26		71
Joliet	Will	48		26		74
Macomb	McDonough	42		26		68
Mattoon	Coles	46		26		72
Peoria	Peoria	59		26		85
Rock Island/Moline	Rock Island	51		26		77
Rockford	Winnebago	52		26		78
Springfield	Sangamon	48		26		74
INDIANA						
Anderson	Madison	49		26		75
Bloomington	Monroe	47		26		73
Charlestown/Jeffersonville	Clark County; Indiana Army Ammunition Plant	51		26		77
Columbus	Bartholomew	41		26		67
Elkhart	Elkhart	55		26		81
Evansville	Vanderburgh	45		26		71
Fort Wayne	Allen	54		26		80
Gary	Lake	42		26		68
Indianapolis	Marion County; Fort Benjamin Harrison	62		26		88
Jasper	Dubois	41		26		67
Lafayette	Tippecanoe	49		26		75
Muncie	Delaware	55		26		81
Nashville	Brown	57		26		83
South Bend	St. Joseph	55		26		81
Terre Haute	Vigo	46		26		72
IOWA						
Bettendorf/Davenport	Scott	48		26		74
Cedar Rapids	Linn	41		26		67
Des Moines	Polk	50		26		76
Iowa City	Johnson	45		26		71
Sioux City	Woodbury	41		26		67
KANSAS						
Kansas City	Johnson and Wyandotte (See also Kansas City, MO)	60		26		86
Manhattan	Riley	44		26		70
Topeka	Shawnee	43		26		69
Wichita	Sedgwick	56		26		82
KENTUCKY						
Bowling Green	Warren	44		26		70
Covington	Kenton	46		26		72
Frankfort	Franklin	44		26		70
Hopkinsville	Christian County; Fort Campbell	45		26		71
Lexington	Fayette	52		26		78
Louisville	Jefferson	51		26		77
LOUISIANA						
Alexandria	Rapides Parish	43		26		69
Baton Rouge	East Baton Rouge Parish	50		26		76
Bossier City	Bossier Parish	57		26		83
Gonzales	Ascension Parish	51		26		77
Lafayette	Lafayette Parish	41		26		67
Lake Charles	Calcasieu Parish	42		26		68
Monroe	Ouachita Parish	41		26		67
New Orleans	Parishes of Jefferson, Orleans, Plaquemines and St. Bernard.	56		34		90
Shreveport	Caddo Parish	51		26		77
Slidell	St. Tammany Parish	42		26		68
MAINE						
Auburn	Androscoggin	56		26		82
Augusta	Kennebec	45		26		71
Bangor	Penobscot	51		26		77
Bar Harbor	Hancock	60		26		86
Bath	Sagadahoc	64		26		90
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NJ).	56		26		82
Portland	Cumberland	67		26		93
Rockport	Knox	62		26		88
Sanford	York	46		26		72
Wiscasset	Lincoln	43		26		69

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
MARYLAND						
(For the counties of Montgomery and Prince Georges, see District of Columbia.)						
Annapolis	Anne Arundel	70		34		104
Baltimore	Baltimore and Harford	65		34		99
Columbia	Howard	87		34		121
Cumberland	Allegany	47		26		73
Easton	Talbot	52		26		78
Frederick	Frederick	54		26		80
Hagerstown	Washington	48		26		74
Lexington Park/St. Inigoes/Leonardtown	St. Marys	54		26		80
Lusby	Calvert	54		26		80
Ocean City	Worcester	91		34		125
Salisbury	Wiscomico	50		26		76
Waldorf	Charles	54		26		80
MASSACHUSETTS						
Andover	Essex	81		34		115
Boston	Suffolk	87		34		121
Greenfield	Franklin	55		26		81
Hyannis	Barnstable	61		26		87
Lowell	Middlesex	81		34		115
Martha's Vineyard/Nantucket	Dukes and Nantucket	102		34		136
New Bedford	Bristol	46		26		72
Northampton	Hampshire	52		26		78
Pittsfield	Berkshire	52		26		78
Plymouth	Plymouth	92		26		118
Quincy	Norfolk	81		34		115
Springfield	Hampden	60		26		86
Worcester	Worcester	59		26		85
MICHIGAN						
Ann Arbor	Washtenaw	65		26		91
Battle Creek	Calhoun	47		26		73
Bay City	Bay	42		26		68
Bellaire	Antrim	51		26		77
Boyne City	Charlevoix	62		26		88
Cadillac	Wexford	51		26		77
Detroit	Wayne	72		34		106
Gaylord	Otsego	53		26		79
Grand Rapids	Kent	52		26		78
Houghton Lake	Roscommon	54		26		80
Jackson	Jackson	49		26		75
Kalamazoo	Kalamazoo	57		26		83
Lansing/East Lansing	Ingham	51		26		77
Leland	Leelanau	48		26		74
Mackinac Island	Mackinac	59		26		85
Midland	Midland	51		26		77
Mount Pleasant	Isabella	43		26		69
Pontiac	Oakland	48		26		74
Port Huron	St. Clair	42		26		68
Saginaw	Saginaw	51		26		77
St. Joseph/Benton Harbor/Niles	Berrien	45		26		71
Traverse City	Grand Traverse	60		26		86
Warren	Macomb	43		26		69
MINNESOTA						
Bemidji	Beltrami	42		26		68
Brainerd	Crow Wing	46		26		72
Duluth	St. Louis	48		26		74
Mendota Heights	Dakota	56		26		82
Minneapolis/St. Paul	Anoka, Hennepin, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount.	56		26		82
Rochester	Olmsted	54		26		80
MISSISSIPPI						
Jackson	Hinds	50		26		76
Natchez	Adams	47		26		73
Vicksburg	Warren	41		26		67
MISSOURI						
Cape Girardeau	Cape Girardeau	43		26		69
Columbia	Boone	49		26		75
Jefferson City	Cole	48		26		74
Kansas City	Clay, Jackson and Platte (See also Kansas City, KS)	60		26		86
Osage Beach	Camden	64		26		90
Springfield	Greene	51		26		77
St. Louis	St. Charles and St. Louis	63		26		89
MONTANA						
Great Falls	Cascade	41		26		67
NEBRASKA						
Lincoln	Lancaster	41		26		67
Omaha	Douglass	50		26		76
NEVADA						
Elko	Elko	50		26		76
Las Vegas	Clark County; Nellis AFB	69		34		103

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
Reno	Washoe	44		26		70
NEW HAMPSHIRE						
Concord	Merrimack	52		26		78
Conway	Carroll	81		26		107
Durham	Stafford	73		26		99
Laconia	Belknap	64		26		90
Manchester	Killsborough	68		26		94
Plymouth	Grafton	54		26		80
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME).	56		26		82
NEW JERSEY						
Atlantic City	Atlantic	107		34		141
Belle Mead	Somerset	62		26		88
Camden	Camden	59		26		85
Dover	Morris County; Picatinny Arsenal	64		26		90
Eatontown	Monmouth County; Fort Monmouth	50		34		84
Edison	Middlesex	51		34		85
Millville	Cumberland	49		26		75
Morrestown	Burlington	68		26		94
Newark	Bergen, Essex, Hudson, Passaic and Union	84		34		118
Ocean City/Cape May	Cape May	96		34		130
Princeton/ Trenton	Mercer	80		34		114
Salem	Salem	61		26		87
Tom's River	Ocean	79		26		105
NEW MEXICO						
Albuquerque	Bernalillo	59		26		85
Artesia	Eddy	45		26		71
Cloudcroft	Otero	64		34		98
Farmington	San Juan	49		26		75
Gallup	McKinley	49		26		75
Grants	Cibola	41		26		67
Las Cruces/White Sands	Dona Ana	43		26		69
Las Vegas	San Miguel	44		26		70
Los Alamos	Los Alamos	48		26		74
Raton	Colfax	57		26		83
Santa Fe	Santa Fe	65		34		99
Taos	Taos	49		26		75
Tucumcari	Quay	46		26		72
NEW YORK						
Albany	Albany	63		26		89
Auburn	Cayuga	56		26		82
Batavia	Genesee	55		26		81
Binghampton	Broom	57		26		83
Buffalo	Erie	50		26		76
Canton	St. Lawrence	52		26		78
Catskill	Greene	48		26		74
Corning	Stauben	58		26		84
Elmira	Chemung	49		26		75
Glens Falls	Warren	56		26		82
Ithaca	Tompkins	59		26		85
Jamestown	Chautauqua	43		26		69
Kingston	Ulster	56		26		82
Lake Placid	Essex	78		26		104
Monticello	Sullivan	55		34		89
New York City	The boroughs of Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties.	113		34		147
Niagara Falls	Niagara	61		26		87
Palisades	Rockland	50		26		76
Poughkeepsie	Dutchess	68		26		94
Rochester	Monroe	63		26		89
Romulus	Seneca	56		26		82
Saratoga Springs	Saratoga	58		26		90
Schenectady	Schenectady	55		26		81
Syracuse	Onondaga	57		26		83
Troy	Rensselaer	62		26		88
Utica	Oneida	57		26		83
Watertown	Jefferson	53		26		79
Watkins Glen	Schuyler	72		26		99
West Point	Orange	44		26		70
White Plains	Westchester	93		34		127
NORTH CAROLINA						
Asheville	Buncombe	48		26		74
Charlotte	Mechlenburg	58		26		84
Duck	Dare	57		26		83
Elizabeth City	Pasquotank	53		26		79
Greenville	Pitt	59		26		85
Havelock	Craven	43		26		69
High Point/Greensboro	Guilford	54		26		80
Jacksonville	Onslow	42		26		68
Kinston	Lenoir	47		26		73

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
Morehead City	Carteret	53		26		79
Raleigh/Durham/Chapel Hill	Wake, Durham and Orange	56		26		82
Wilmington	New Hanover	45		26		71
Winston-Salem	Forsyth	49		26		75
NORTH DAKOTA						
Bismarck	Burleigh	44		26		70
Fargo	Cass	52		26		78
Grand Forks	Grand Forks	46		26		72
Minot	Ward	48		26		74
OHIO						
Akron	Summit	54		26		80
Bellevue/Norwalk	Huron	55		26		81
Chillicothe	Ross	44		26		70
Cincinnati/Evendale	Hamilton and Warren	50		26		76
Cleveland	Cuyahoga	64		34		98
Columbus	Franklin	59		26		85
Dayton	Montgomery County; Wright-Patterson AFB	61		26		87
Defiance	Defiance	46		26		72
East Liverpool	Columbiana	47		26		73
Elyria	Lorain	51		26		77
Findlay	Hancock	44		26		70
Geneva	Ashtabula	55		26		81
Hamilton/Fairfield	Butler	51		26		77
Lancaster	Fairfield	41		26		67
Lima	Allen	43		26		69
Port Clinton/Oakharbor	Ottawa	59		26		85
Portsmouth	Scioto	45		26		71
Sandusky	Erie	62		26		88
Springfield	Clark	43		26		69
Tinney/Fremont	Sandusky	46		26		72
Toledo	Lucas	50		26		76
Wapakoneta	Auglaize	46		26		72
OKLAHOMA						
Norman	Cleveland	44		26		70
Oklahoma City	Oklahoma	47		26		73
Stillwater	Payne	44		26		70
Tulsa/Bartlesville	Osage, Tulsa and Washington	45		26		71
OREGON						
Beaverton	Washington	46		26		72
Clackamas	Clackamas	48		26		74
Coos Bay	Coos	45		26		71
Lincoln City	Lincoln	49		26		75
Portland	Multnomah	54		26		80
Seaside	Clatsop	70		26		96
PENNSYLVANIA						
Allentown	Lehigh	51		26		77
Altoona	Blaire	44		26		70
Chester	Delaware	46		34		80
Du Bois	Clearfield	51		26		77
Easton	Northhampton	64		26		90
Erie	Erie	45		26		71
Gettysburg	Adams	53		26		79
Harrisburg	Dauphin	62		26		88
Johnstown	Cambria	55		26		81
King of Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA).	68		34		102
Lancaster	Lancaster	63		26		89
Lebanon	Lebanon County; Indian Town Gap Military Reservation.	51		26		77
Mansfield	Tioga	49		26		75
Mercer	Mercer	54		26		80
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County.	79		34		113
Pittsburgh/Monroeville	Allegheny	62		26		88
Reading	Berks	49		26		75
Scranton	Lackawanna	53		26		79
Shippingport	Beaver	44		26		70
Somerset	Somerset	58		26		84
State College	Centre	48		26		74
Uniontown	Fayette	73		26		99
Valley Forge	Chester	68		34		102
Warminster	Bucks County; Naval Air Development Center	56		26		82
Wilkes-Barre	Luzerne	54		26		80
York	York	52		26		78
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville.	61		26		87
Newport	Newport	89		34		123
Providence	Providence	74		26		100
Quonset Point	Washington	48		26		74

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
SOUTH CAROLINA						
Charleston	Charleston and Berkeley	52		26		78
Columbia	Richland	50		26		76
Greenville	Greenville	42		26		68
Hilton Head	Beaufort	66		34		120
Myrtle Beach	Horry County; Myrtle Beach AFB	74		26		100
Rock Hill	York	45		26		71
Spartanburg	Spartanburg	45		26		71
SOUTH DAKOTA						
Custer	Custer	50		26		76
Hot Springs	Fall River	64		26		90
Rapid City	Pennington	59		26		85
Sioux Falls	Minnehaha	48		26		74
TENNESSEE						
Chattanooga	Hamilton	41		26		67
Columbia	Maury	49		26		75
Gatlinburg	Sevier	63		26		89
Johnson City	Washington	54		26		80
Kingsport/Bristol	Sullivan	44		26		70
Knoxville	Knox County; city of Oak Ridge	50		26		76
Memphis	Shelby	51		26		77
Nashville	Davidson	52		26		78
Shelbyville	Bedford	52		26		78
TEXAS						
Abilene	Taylor	43		26		69
Amarillo	Potter	46		26		72
Austin	Travis	55		26		81
Bay City	Matagorda	41		26		67
Brownsville	Cameron	45		26		71
Brownwood	Brown	42		26		68
College Station/Bryan	Brazos	43		26		69
Corpus Christi	Nueces	54		26		80
Dallas/Fort Worth	Dallas and Tarrant	74		34		108
Denton	Denton	47		26		73
El Paso	El Paso	49		26		75
Galveston	Galveston	58		26		84
Granbury	Hood	59		26		85
Houston	Harris County; L. B. Johnson Space Center and Ellington AFB.	62		34		96
Lajitis	Brewster	56		26		82
Laredo	Webb	48		26		74
Longview	Gregg	42		26		68
Lubbock	Lubbock	49		26		75
McAllen	Hidalgo	49		26		75
Midland/Odessa	Ector and Midland	49		26		75
Nacogdoches	Nacogdoches	43		26		69
Plainview	Hale	45		26		71
Plano	Collin	74		26		100
San Antonio	Bexar	50		26		76
Temple	Bell	42		26		68
Waco	McLennen	45		26		71
Wichita Falls	Wichita	41		26		67
UTAH						
Bullfrog	Garfield	69		26		95
Salt Lake City/Ogden	Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot.	60		26		86
VERMONT						
Burlington	Chittenden	54		26		80
Montpelier	Washington	45		26		71
Rutland	Rutland	50		26		76
White River Junction	Windsor	56		26		82
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, See Distict of Columbia.)						
Blacksburg	Montgomery	57		26		83
Bristol *		46		26		72
Charlottesville *		53		26		79
Lynchburg *		46		26		72
Manassas/Manassas Park *	Prince William	52		26		78
Norfolk * (also Virginia Beach, Portsmouth, Hampton, Newport News & Chesapeake) *.	York County; Naval Weapons Station, Yorktown	55		26		81
Petersburg *	Fort Lee	44		26		70
Richmond *	Chesterfield and Henrico Counties; also Defense Supply Center.	56		26		82
Roanoke *	Roanoke	49		26		75
Wallops Island	Accomack	54		26		80
Williamsburg *		68		34		102
* Denotes independent cities.						
WASHINGTON						
Everett	Snohomish	55		26		81

Per diem locality		Maximum lodging amount (a)	+	M&IE rate (b)	=	Maximum per diem rate (c) [4]
Key city [1]	County and/or other defined location [2] [3]					
Kelso/Longview	Cowlitz	46		26		72
Seattle	King	65		34		99
Spokane	Spokane	47		26		73
Tacoma	Pierce	41		26		67
Tumwater/Olympia	Thurston	52		26		78
Vancouver	Clark	49		26		75
WEST VIRGINIA						
Beckley	Raleigh	43		26		69
Charleston	Kanawha	49		26		75
Harpers Ferry	Jefferson	52		26		78
Huntington	Cabell	44		26		70
Morgantown	Monongalia	46		26		72
Wheeling	Ohio	41		26		67
WISCONSIN						
Brookfield	Waukesha	50		26		76
Eau Claire	Eau Claire	48		26		74
Green Bay	Brown	45		26		71
Kewaunee	Kewaunee	58		26		84
La Crosse	La Crosse	50		26		76
Lake Geneva	Walworth	81		26		107
Madison	Dane	56		26		82
Milwaukee	Milwaukee	55		26		81
Minocqua/Rhinelander	Oneida	45		26		71
Mishicot	Manitowoc	55		26		81
Oshkosh	Winnebago	53		26		79
Sturgeon Bay	Door	50		26		76
Wausau	Marathon	48		26		74
Wautoma	Waushara	49		26		75
Wisconsin Dells	Columbia	49		26		75
WYOMING						
Cheyenne	Laramie	43		26		69
Cody	Park	42		26		68
Gillette	Campbell	42		26		68
Jackson	Teton	60		26		86
Thermopolis	Hot Springs	42		26		68

[1] Unless otherwise specified, the per diem locality is defined as "all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries."

[2] Per diem localities with county definitions shall include "all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties."

[3] Military installations of Government-related facilities (whether or not specifically named) that are located partially within the city or county boundary shall include "all locations that are geographically part of the military installation or Government-related facility, even though part(s) of such activities may be located outside the defined per diem locality."

[4] Federal agencies may submit a request to GSA for review of the subsistence cost in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be surveyed on an annual basis by GSA to determine whether rates are adequate. Requests for subsistence rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Federal Supply Service, Attn: Travel Management Division (FBT), Washington, DC 20406. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus of subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations.

Dated: December 28, 1989.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 90–1061 Filed 1–18–90; 8:45 am]

BILLING CODE 6820–24–M

federal register

Friday
January 19, 1990

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1990.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of January 1, 1990, of seven deferrals contained in the first special message of FY 1990. This message was transmitted to Congress on October 2, 1989.

Rescissions

As of the date of this report, no rescission proposals are pending before Congress.

Deferrals (Table A and Attachment A)

As of January 1, 1990, $1,303.4 million in budget authority was being deferred from obligation. Attachment A shows the history and status of each deferral reported during FY 1990.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** cited below:

54 FR 41410, Friday, October 6, 1989.

Richard G. Darman,

Director.

BILLING CODE 3110–01–M

TABLE A
STATUS OF 1990 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	1,380.4
Routine Executive releases through January 1, 1990.....	-77.0
Overturned by the Congress.....	0
Currently before the Congress.....	1,303.4

Attachments

Attachment A - Status of Deferrals - Fiscal Year 1990

As of January 1, 1990 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-90
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D90-1	271,000		10-02-89	69,950				201,050
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D90-2	188,680		10-02-89	7,000				181,680
Cooperative work	D90-3	410,189		10-02-89					410,189
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D90-4	1,047		10-02-89					1,047
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D90-5	7,078		10-02-89					7,078
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D90-6	44		10-02-89					44

Attachment A - Status of Deferrals - Fiscal Year 1990

As of January 1, 1990 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 1-1-90
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund).....	D90-7	502,361		10-02-89					502,361
TOTAL, DEFERRALS.....		1,380,400	0		76,950	0		0	1,303,450

P. 2

[FR Doc. 90-1198 Filed 1-18-90; 8:45 am]

BILLING CODE 3110-01-C

federal register

Friday
January 19, 1990

Part V

Department of Health and Human Services

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). This collection package is being submitted for expedited review in compliance with 5 CFR 1320.18.

(Call the Reports Clearance Officer on 202–252–5601 for copies of package)

FSA–106, Job Opportunities and Basic Skills Training (JOBS) program State Plan and FSA–107, Supportive Services State Plan—NEW—States must use these forms to submit their JOBS and Supportive Services state plans to FSA. The plans constitute an agreement between the state and the federal government as to how the JOBS and Supportive Services programs will operate within the state. The use of these forms will promote program consistency and facilitate collection of information needed to compare program data.

1. FSA–106, JOBS State Plan: Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: Biennially; Average Burden per Response: 140 hours; Estimated Burden: 7,560 hours.

2. FSA–107, Supportive Services State Plan—Respondents: State or local governments; Number of Respondents: 54; Frequency of Response: Biennially; Average Burden per Response: 70 hours; Estimated Burden: 3,780 hours.

Total Burden Hours—11,340.

OMB Desk Clearance Officer: Justin Kopca.

We are requesting OMB to complete their review of this collection by February 9, 1990. Consideration will be given to comments and suggestions received within 10 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street NW., Washington, DC 20503.

Dated: January 12, 1990.

Sylvia E. Vela,

Deputy Associate Administrator, Office of Management and Information Systems.

BILLING CODE 4150–04–M

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	SECTION 1 - ASSURANCES As a condition of the receipt of Federal funds under title IV of the Social Security Act, the _____ (name of the single State Agency) herewith submits a State Plan for the implementation of the Jobs Opportunities and Basic Skills Training Program (JOBS) and hereby agrees to administer the program in accordance with titles IV-A and IV-F, and all other applicable Federal laws and regulations and provisions of this State Plan printed herein. The State assures that
482(a)(1)(A) 250.21(a)(1)	(1) The title IV-A agency, will, upon approval of the JOBS plan by the Secretary, have in effect and operation:
484(a)(1)(A) 250.21(a)(1)(i)	(i) A JOBS program that meets the requirements of section 402(a)(19) and title IV-F of the Act; and
402(g) 250.0(b) 250.21(a)(1)(ii)	(ii) A program for providing child care and other supportive services consistent with the requirements of section 402(g) of the Act and with the State's separate Supportive Services plan pursuant to §§ 255.1 and 256.1;
482(a)(3) 250.21(a)(3)	(2) The JOBS program will meet all statutory and regulatory requirements, by cross-reference to appropriate statutory and regulatory citations;

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 1 - Assurances (cont'd)
402(a)(19)(B)(i)(I) &(II) 250.30(a) 250.31 250.21(a)(3)	(3) To the extent that the program is available in a political subdivision of a State and the State's resources otherwise permit, the State will require non-exempt recipients and allow volunteers for whom the State guarantees child care in accordance with §255.2(a) to participate;
484(a)(3) 250.21(a)(4)	(4) Individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition in assignment to training and education developed under the JOBS program;
484(a) 250.21(a)(5)	(5) In assigning participants to any JOBS program activity the State agency will comply with the provisions of section 484(a) of the Act;
250.21(a)(6)	(6) Benefits and services provided under titles IV-A, IV-D, and IV-F of the Act will be furnished in an integrated manner;
482(a)(1)(B)(ii) 250.72(e) 250.21(a)(7)	(7) Services provided or funded by the State IV-A agency are not otherwise available on a non-reimbursable basis, as required by §250.72(e);
482(c)(1) 250.21(a)(8)	(8) All applicants for and recipients of AFDC are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing;

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 1 - Assurances (cont'd)
482(a)(3) 250.72(b) 250.21(a)(9)	(9) State and local funds expended for such purpose shall be maintained at least at the level of such expenditures for FY 1986 which is _____; and
482(a)(3) 250.72(a) 250.21(a)(10)	(10) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of part F.

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	SECTION 2 - ADMINISTRATION
	Section 2.1 - Goals and Objectives
481(a) 250.0(a) 250.21(b)(1)	The following are the goals and objectives of the State's JOBS program:
482(a)(1)(B) 250.21(b)(1)	The State's implementation of JOBS during the biennium supports these goals and objectives in the following ways:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

(state name)

for the period _____ through _____

CITATIONS	
482(a)(2) 250.10(a) 250.21(b)(2)	Section 2.2 - Administrative Structure The State agency responsible for administration or supervision of the State's AFDC program under title IV-A is also responsible for administration or supervision of its JOBS program under title IV-F. ATTACHMENT 2.2A contains an organizational chart of the State agency and a brief description of the functions of its various components. ATTACHMENT 2.2B contains an organizational chart of the unit within the agency that bears responsibility for JOBS and a description of its functions and activities. ATTACHMENT 2.2C contains an organizational chart of the unit(s) within the agency that bears responsibility for child care and supportive services and a description of its functions and activities.

TN # _____ Approval Date _____ Effective Date _____

Supersedes TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 2.3 - Statewideness
482(a)(1)(D)(i) 250.11(a) 250.21(b)(4)	The JOBS program operates statewide. [ ] yes [ ] no; JOBS is available in the following counties/political subdivisions:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS

485(b)&(d)
250.13(a)&(c)
250.21(b)(3)

Section 2.4 - Contracts and Agreements

For each service and activity for which the State has a contract or an agreement, (1) the types of contracts and (2) the types of providers used are indicated below.

SERVICE	NON-REIMBURSABLE/ AGREEMENTS	Contract				Provider		
		Fixed fee	Performance based	Cost based	Other *	PUBLIC	PRIVATE/non-profit	PRIVATE/for-profit

[APPEND ADDITIONAL PAGES AS NECESSARY]

* *Described in ATTACHMENT 2.4*

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 2.5 - Coordination and Consultation
483(a)(1) 250.12(a) 250.12(b) & (c)(1)-(5) 250.21(e)	A description of the coordination and consultation involved in developing the State JOBS plan follows:
482(a)(1) 483(a)(1) 250.12(a) 250.21(e)(3)	The State JOBS plan demonstrates consistency with the coordination criteria specified in the Governor's coordination and special services plan at §250.12(a) as follows:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 2.5 - Coordination and Consultation (cont'd)
483(a)(1) 250.12(b) 250.21(e)	A description of the State's consultation and coordination with other providers as specified in §250.12(b) follows:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 2.5 - Coordination and Consultation (cont'd)
250.21(e)(1)	The following identifies specific existing resources that are available and appropriate for participants in the State JOBS program:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

STATE PLAN for JOBS (Title IV-F)

_____ [state name]

for the period _____ through _____

CITATIONS	
	Section 2.5 - Coordination and Consultation (cont'd)
485(b) 485(c) 250.12(d)(1) 250.13(b)	The following describes the process by which the State IV-A agency and local welfare agencies consult with the private industry councils, for the development of arrangements and contracts under JOBS and under the JTPA as described in §250.13:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ [state name] STATE PLAN for JOBS (Title IV-F)

for the period _____ through _____

CITATIONS	
	Section 2.5 - Coordination and Consultation (cont'd)
485(e) 250.21(e)(4) 250.12(d)(2)	The following is the result of the consultation on the types of jobs that are available or are likely to become available in the area:

TN # _____ Approval Date _____ Effective Date _____

Supersedes TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[State name]

for the period _____ through _____

CITATIONS	
	SECTION 3 - CLIENT TARGETING AND PROCESSING Section 3.1 - Target Population
403(1)(2)(B) 403(1)(2)(C) 250.1 250.74(a)(1) 250.21(b)(5)(i)	The State serves the target populations as described at §250.1. [ ] yes (skip to section 3.2) [ ] no; characteristics of the caseload that make it infeasible to meet the requirements of §250.74(a)(1) are:
	AND
403(1)(2)(C) 250.1 250.21(b)(5)(ii)	The following describes the categories of long-term or potential long-term recipients that the State is targeting instead of those described at §250.1:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
482(a)(1)(B)(i) 250.21(f)	Section 3.2 - Number of Persons to be Served The following are estimates of the average number of persons to be served on a monthly basis over the course of the following years: 1st Year 19____ _____ 2nd Year 19____ _____ Period to be covered by the plan: _____ through _____

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 3.3 - Client Flow Process
250.21(d)(1)	Attachment 3.3 provides a description and/or a flow chart which summarizes the procedural steps for providing services/activities to JOBS clients. This description/flow chart explains the methodical progression of clients into and through the JOBS program from application and orientation through assessment, referral, development of employability skills, redeterminations, sanctions, hearings, and other applicable administrative or program processes.

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS
482(a)(1)(B)(ii)
250.44 - 250.48(a); 250.21(d)(ii)&(iii)

Section 3.4 - Availability and Methods of Providing Services and Activities, by Area and Date of Implementation
[enter letter codes as appropriate]:

A. Provided directly by the IV-A agency

B. Provided by other entities at no charge to the IV-A agency (non-reimbursable)

C. Provided by other entities under purchase agreement

	Scheduled Date of Implementation	MANDATORY: EDUCATIONAL ACTIVITIES: High School	HS Equivalent/GED	Basic/Remedial	English Proficiency	Other *	JOB SKILLS TRAINING	JOB READINESS ACTIVITIES	JOB DEVELOPMENT/PLACEMENT	OPTIONAL: JOB SEARCH	ON-THE-JOB TRAINING	WORK SUPPLEMENTATION	COMMUNITY WORK EXPERIENCE	POSTSECONDARY EDUCATION	OTHER STATE PROGRAMS *	SELF-INITIATED EDUCATION/TRNG
STATEWIDE																
OR																
Subdivision/Area *[list]*:																

* *A description of other State programs .....is provided at Section 4.10.*

[APPEND ADDITIONAL PAGES AS NECESSARY]

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 3.5 - Case Management
482(b)(3) 250.43 250.21(d)(3) 250.21(d)(13)	The State elects to use a case management system pursuant to §250.43. [ ] no (skip to section 3.6) [ ] yes; the following describes the process for the delivery of case management services, including the entities by which it is performed: If not used statewide, the following is the criteria by which an individual will be assigned a case manager:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 3.5 - Case Management (cont'd)
250.73(e)(1)	The State elects to provide case management services to an individual who loses eligibility for AFDC after accepting employment. [ ] no [ ] yes; the length of time, up to 90 days, following acceptance of employment for which case management services will be provided is _____.

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 3.6 - Client Agreements or Contracts
482(b)(2) 250.42(a) 250.42(b) 250.21(d)(4)	The State elects to use client agreements or contracts pursuant to §250.42(a). [ ] no (skip to section 4.1) [ ] yes
	The client agreement is considered a contract between the State and the JOBS participant pursuant to applicable State laws and regulations. [ ] no [ ] yes
	The State uses client agreements or contracts for all participants. [ ] yes [ ] no; the bases for determining the applicable participants are as follows:
	The agreement/contract is found at Attachment 3.6.

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

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CITATIONS	
	SECTION 4 - JOBS PROGRAM COMPONENTS Section 4.1 - Job Search
250.60	The State elects to operate a job search component pursuant to §250.60. [ ] no (skip to section 4.2) [ ] yes The State requires AFDC applicants to participate in job search from the date of application. [ ] no [ ] yes, for a period of _____, but not in excess of 8 consecutive weeks. The State requires recipients to participate in job search, in addition to any job search required at the time of application. [ ] no [ ] yes, for a period of _____, but not in excess of 8 weeks (or its equivalent) in any 12 consecutive months.

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

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CITATIONS	
	Section 4.1 - Job Search (cont'd) Additional job search activities, beyond those described on the preceding page, are required as part of the following components to improve the individual's employment prospects:

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_____ STATE PLAN for JOBS (Title IV-F)

(state name)

for the period _____ through _____

CITATIONS	
	Section 4.2 - On-the-Job-Training (OJT)
250.61	The State elects to operate an OJT component, pursuant to §250.61. [ ] no (skip to section 4.3) [ ] yes
256 250.61(f)	The State elects to treat all child care provided after an individual in an OJT job loses eligibility for AFDC as -- [ ] transitional child care under Part 256, or [ ] child care for JOBS participants under Part 255.

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

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CITATIONS	
	Section 4.3 - Work Supplementation Program
482(e) 250.62 250.21(d)(7)	The State elects to operate a work supplementation component pursuant to §250.62. [ ] no (skip to section 4.4) [ ] yes
482(e)(3)(A) 250.62(c)(2)	The State work supplementation component is: [ ] mandatory in all parts of the State [ ] voluntary in all parts of the State [ ] mandatory in some parts of the State, and voluntary in other parts of the State
250.62(f)	The State elects to "freeze the grant" of the participant at the time of placement for the duration of the individual's participation in the supplemented job. [ ] no [ ] yes, as described below:

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_____ STATE PLAN for JOBS (Title IV-F)

(State name)

for the period _____ through _____

CITATIONS	
	Section 4.3 - Work Supplementation Program (cont'd)
402(a)(13)(A)(ii) 482(e)(3)(D) 233 250.62(g) 250.21(d)(7)(i)	Individuals holding supplemented jobs are exempted from the retrospective budgeting requirements at Part 233 and/or monthly reporting. [ ] no [ ] yes, check applicable item(s): [ ] exempt from retrospective budgeting and monthly reporting; [ ] exempt retrospective budgeting only.
402(a)(23) 482(e)(2)(C) 482(e)(2)(D) 233.20 250.62(i)(1) 250.21(d)(7)(ii)	The State varies the standard of need by subdivision in which the work supplementation component is in operation. [ ] no [ ] yes, as follows:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 4.3 - Work Supplementation Program (cont'd)
402(a)(1) 482(e)(2)(C) 482(e)(2)(D) 233.20 250.62(i)(2) 250.21(d)(7)(iii)	The State varies the standard of need for different categories of participants on the basis of ability to participate in the program. [ ] no [ ] yes, as follows:
482(e)(2)(C) 482(e)(2)(D) 482(e)(2)(E) 250.62(i)(3) 250.21(d)(7)(iv)	The State elects to make other adjustments in the amount of aid paid under the title IV-A plan to different categories of participants pursuant to §250.62(i)(3). [ ] no [ ] yes, as described below:

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_____ STATE PLAN for JOBS (Title IV-F)

[State name]

for the period _____ through _____

CITATIONS	
	Section 4.3 - Work Supplementation Program (cont'd)
482(e)(2)(G)(i) 250.62(j) 250.21(d)(7)(v)	The amount of earned income to be disregarded from participation in a supplemented job has been reduced or eliminated. [ ] no [ ] yes, as specified below:
482(e)(2)(G)(ii) 250.62(k) 250.21(d)(7)(vi)	The State elects to vary the number of months (up to nine) in which the $30 and one-third or the $30 disregard is applied. [ ] no [ ] yes, as specified below:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 4.3 - Work Supplementation Program (cont'd)
482(e)(1) 483(e)(2)(F) 250.62(m) 250.21(d)(7)(vii)	The State uses a sampling methodology to determine the amounts to be reserved and used for providing and subsidizing jobs pursuant to §250.62(m). [ ] no [ ] yes, as explained below:
256 250.62(h)	The State treats all child care provided after an individual loses eligibility for AFDC as -- [ ] transitional child care under Part 256, or [ ] child care for JOBS participants under Part 255

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 4.4 - Community Work Experience Program (CWEP)
250.63(b)	The State elects to operate a community work experience program component, pursuant to §250.63. [ ] no (skip to section 4.5) [ ] yes The following are the State's procedures for coordination among CWEP, job search, and the other employment-related activities under JOBS which ensure that job placement has priority:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
482(d)(1)(B)(i) 250.46 250.21(d)(8)(i)	Section 4.5 - Postsecondary Education The State will refer individuals to postsecondary education in appropriate cases. [ ] no (skip to section 4.6) [ ] yes The State elects to establish limits or restrictions on postsecondary education [ ] no [ ] yes, and the following describes the limits and restrictions the State elects to establish, including, as appropriate, the type of education or training offered, length of program, characteristics of the institution, and/or length of coverage under JOBS:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 4.5 - Postsecondary Education (cont'd)
482(d)(1)(B)(i) 250.46 250.21(d)(9)(iii)	The State's criteria for approving educational activities under §250.46 are:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
482(d)(1)(A)(ii)(IV) 482(d)(1)(B)(ii) 250.47 250.63(k) 250.21(d)(5)	Section 4.6 - Other Work, Education, or Training Other Work Experience: The State offers an alternative work experience component pursuant to §250.63(k). [ ] no [ ] yes; the following describes the program, including work site sponsors, types of work activities, the hours, and duration of participation, target populations, and differences from CWEP:

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STATE PLAN for JOBS (Title IV-F)

_____
[state name]

for the period _____ through _____

CITATIONS	
	Section 4.6 - Other Work, Education, or Training (cont'd) Other Education, Training and Employment Activities: The State offers alternative employment, education, or training pursuant to §250.47. [ ] no [ ] yes; a description of each activity, applicable client group, duration, and sub-State areas of operation (if less than Statewide) follows:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
402(a)(19)(F) 250.48(a) 250.21(d)(8)(ii)	Section 4.7 - Self-Initiated Education or Training The State elects to limit or restrict self-initiated education or training under §250.48(a) for which the State provides supportive services. [ ] no [ ] yes; and the following describes the limits and restrictions that the State has elected to establish including, as appropriate, education or training offered, length of program, characteristics of the institution, or length of coverage under JOBS:

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Supersedes
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_____ STATE PLAN for JOBS (Title IV-F)

[State name]

for the period _____ through _____

CITATIONS	
	Section 4.7 - Self-Initiated Education or Training (cont'd)
402(a)(19)(F) 250.48(a) 250.21(d)(9)(iv)	The State's criteria for approving an individual's self-initiated education or training under §250.48(a) are:

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Supersedes
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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
403(l)(4)(A)(i) 250.33(a) 250.21(d)(6)	Section 4.8 - State-Designed U.P. Work Program The State has designed an alternative work program (not including substitution of education or training activities for the work requirement) for purposes of meeting the Unemployed Parent work requirement. [ ] no [ ] yes; the following describes the alternative work program:

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STATE PLAN for JOBS (Title IV-F)

_____
[state name]

for the period _____ through _____

CITATIONS	
482(d)(2) 250.1 250.32(b)(1) 250.21(d)(1	Section 4.9 - Basic Literacy Level The State elects to define "basic literacy level" as higher than the grade 8.9 floor defined at §250.1. [ ] no [ ] yes; the State's definition is: The State's policies for determining whether a JOBS participant demonstrates achievement of the State's basic literacy level are:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	SECTION 5 - OPTIONAL STATE PRACTICE Section 5.1 - Exemption Based Upon Age of Child
402(a)(19)(C)(iii)(I) 250.30(b)(9)(i) 250.21(c)(1)	The State elects to lower the age of the child for which the caretaker relative receives an exemption: [ ] no; the caretaker relative personally providing care for a child under 3 is exempt. [ ] yes; the age of the child for the child for whom the caretaker relative exemption applies has been lowered to _____, but is not less than age 1.

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 5.2 - Minimum Standards for 30 Hour Exemption
402(a)(19)(C)(iv) 250.30(b)(7) 250.21(c)(4)	The State establishes minimum standards for work that will qualify a non-exempt participant for the exemption for working 30 or more hours per week. [ ] no [ ] yes, as follows:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
402(a)(19)(D) 250.30(b)(9)(iv)(A) 250.30(b)(9)(iv)(B) 250.21(c)(2) 250.21(c)(3)	Section 5.3 - Unemployed Parent Exemptions and Participation State agency policies on exemption and participation of a principal earner and the other parent follows: The exemptions in §250.30(b)(9)(i) and (b)(9)(ii) [ ] apply to either parent, but not both. [ ] apply only to the parent who is not the principal earner. [ ] do not apply because the State requires both parents to participate when child care is guaranteed.

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[State Name]

for the period _____ through _____

CITATIONS	
403(l)(4)(A)(i) 250.33(b) 250.21(c)(6)	Section 5.4 - Unemployed Parent Under Age 25 The State elects to allow a parent under the age of 25, who has not completed high school or an equivalent course of education, to meet the unemployed parent program 16 hour work requirement by participating in educational activities as defined at §250.44(a). [ ] no [ ] yes

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 5.5 - Supplemental AFDC Payment
402(a)(19)(H) 250.35(c) 250.21(c)(5)	The State's definition of "necessary and reasonable expenses" used to calculate "net loss of cash income" for purposes of supplemental AFDC payment issuances, and for "good cause" determinations for refusal to accept employment is:
	The State elects to provide supplemental AFDC payments to any participant who, as a result of employment, would experience a net loss of cash income as defined in §250.35(c). [ ] no [ ] yes

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[state name]

for the period _____ through _____

CITATIONS	
402(a)(19)(E)(ii)(III) 250.32(a)(2) 250.21(d)(10)	Section 5.6 - Criteria for Component Assignment of Teen Parents The State elects the option of being able to excuse a custodial parent, on an individual basis, who is under 18 years of age and who is beyond the age of compulsory school attendance from participation in educational activities described in §250.44(a)(1). [ ] no [ ] yes; the criteria for excusing such parents in accordance with the requirements of §250.32(a)(2) are:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 5.6 - Criteria for Component Assignment of Teen Parents (cont'd)
402(a)(19)(E) (ii)(III) 250.32(a)(3) 250.21(d)(9)(i)	The following are the State's criteria for determining if it is inappropriate to place a 18 or 19 year old custodial parent into educational activities:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
482(d)(2) 250.32 (b) 250.21(d)(9)(ii)	Section 5.7 - Educational Criteria for Participants Age 20 and Over The State's criteria for assigning an individual aged 20 or over, who does not have a high school diploma or the equivalent, to educational activities are:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	SECTION 6 - CONCILIATION AND HEARINGS
250.34(b)	Section 6.1 - Sanctions To determine that an individual's failure to comply has ceased, the State elects to require an individual to participate in a JOBS activity for up to two weeks. [ ] no [ ] yes, and the length of the required trial period is _____.

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 6.2 - Good Cause
402(a)(19)(G)(i) 250.35(d) 250.21(d)(12)	In addition to the good cause criteria in §250.35(a) through §250.35(c)*, the State also finds good cause for failure to participate when following condition(s) are met:

*See section 5.5 for definition of "necessary and reasonable expenses" used to calculate "net loss of income."

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[State name]

for the period _____ through _____

CITATIONS	
	Section 6.3 - Dispute Resolution
482(h) 250.36(a) 250.21(b)(6)	The following describes the State's conciliation process, including the length of conciliation and the entity responsible for conciliation:

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STATE PLAN for JOBS (Title IV-F)

_____
[State name]

for the period _____ through _____

CITATIONS	
482(h) 402(a)(4) 205.10 250.36(b) 250.21(b)(6)(ii)	Section 6.3 - Dispute Resolution (cont'd) When a hearing is required, it is provided through-- [ ] the hearing process followed by the State agency to implement section 402(a)(4) OR [ ] an alternative fair hearing process specifically established for the JOBS program as specified below:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	
	Section 6.3 - Dispute Resolution (cont'd)
484(d)(1) 251.4 250.21(b)(6)(iii)	The following grievance procedure is used in resolving complaints by regular employees pursuant to section 484(d)(1) of the Act:

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_____ STATE PLAN for JOBS (Title IV-F)

[state name]

for the period _____ through _____

CITATIONS	ATTACHMENT _____

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_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	SECTION 1 - ASSURANCES The Title IV-A agency assures that it will administer child care and other supportive services (including work-related supportive services) in accordance with The Family Support Act of 1988, all other applicable Federal laws and regulations, and provisions of this State Supportive Services plan. It further assures that --
402(g)(3)(B)(ii) 255.4(c)(2) 255.1(e)(1)	(1) Child care services meet applicable standards of State, local, and/or Tribal law;
402(g)(3)(B)(iii) 255.4(c)(1) 255.1(e)(2)	(2) Any entity providing child care allows parental access;
402(g)(1)(B) 255.3(b) 255.1(e)(3)	(3) The State IV-A agency takes the individual needs of the child into account;
255.1(e)(4)	(4) The child care provided or claimed for reimbursement is reasonably related to the hours of participation or employment.

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_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	SECTION 2 - ADMINISTRATIVE STRUCTURE (Completed only if the State does not have an approved JOBS State plan.)
402(a)(3) 205.101	ATTACHMENT 2 contains an organizational chart of the unit(s) within the agency that bears responsibility for child care and supportive services and a description of its functions and activities.

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[state name]

for the period_____ through _____

CITATIONS

402(g)(7)
255.1(f)

SECTION 3 - CHILD CARE

Section 3.1 - Child Care Availability

An assessment of the statewide availability, for use by the State, of non-reimbursable child care services and related coordinated programs:

PROGRAM/SOURCE	AVAILABLE Yes	AVAILABLE No	LEVEL (If data available)*
CHILD CARE SERVICES:			
Title XX (Social Services Block Grant)			
State Funds			
Local Funds			
JTPA			
Other [specify]			
RELATED COORDINATED PROGRAMS:			
Headstart			
Chapter 1			
Preschool Programs for Handicapped Children			
State Preschool for 4 year olds			
State Preschool for 3 year olds			
Other [specify]			

* *Optional. (Data could include annual level of funding, or number of slots provided, or estimated number of families served.)*

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[state name]

for the period _____ through _____

CITATIONS
402(g)(1)((A)&(B)
255.1(a); 255.3(a); 256.1(a)(1)

Section 3.2 - Methods of Payment for Child Care

The State uses the following methods of paying for child care services: *[enter appropriate letter codes in the grid]*

AGENCY ARRANGING CARE	FUNDING SOURCE	CODE
IV-A	IV-A	A
Title XX	IV-A	B1
	Title XX (at no cost to IV-A)	B2
	State/local/other (no cost)	B3
Child Care Resource and Referral	IV-A	C1
	XX (no cost)	C2
	State/local/other (no cost)	C3
Other (Explain in Attachment 3.5-A)		D

ELIGIBILITY FOR CHILD CARE	METHODS OF PAYMENT						
			To Applicant/Recipient/Former Recipient *				
	Directly	Income Disregard	Cash in Advance	Voucher in Advance	Cash Reim-bursement	Purchase of Service	Other Arrangements**
To accept or maintain employment							
To prepare for JOBS							
To participate in JOBS							
To participate in approved education and training in non-JOBS areas							
TRANSITIONAL							
Employed and off AFDC							

* *Caretaker relative*

** *Described in ATTACHMENT 3.5-B*

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_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS

402(g)(1)(A)
255.6

Section 3.3 - Methods of Providing Child Care

The State arranges child care as indicated below:

[All categories that apply are marked with an "X".]

TYPE	Regular		For Handicapped (Special Needs)	
	Relative	Nonrelative	Relative	Nonrelative
Center Care*				
Group Family Day Care				
Family Day Care				
In-Home Care				

*Including child care provided on school sites.

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(state name)

for the period_____ through _____

CITATIONS	
255.2(f) 255.1(k)	Section 3.4 - Child Care for Tribal Entities The State has Tribal entities that are operating JOBS programs. [ ] no [ ] yes; see Section 3.5 for chart describing how the State funds child care for such programs.

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_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period _____ through _____

CITATIONS
402(g)(1)((A)&(B)
255.1(a); 255.3(a); 256.1(a)(1)

Section 3 .5 - Methods of Payment for Child Care for Tribal Entities

The State uses the following methods of paying for child care services: *[enter appropriate letter codes in the grid]*

AGENCY ARRANGING CARE	*FUNDING SOURCE*	CODE
IV-A	IV-A	A
Title XX	IV-A	B1
	Title XX (at no cost to IV-A)	B2
	State/local/other (no cost)	B3
Child Care Resource and Referral	IV-A	C1
	XX (no cost)	C2
	State/local/other (no cost)	C3
Other (Explain in Attachment 3.5-A)		D

ELIGIBILITY FOR CHILD CARE	METHODS OF PAYMENT							
			To Applicant/Recipient/Former Recipient *					
	Directly	Income Disregard	Cash in Advance	Voucher in Advance	Cash Reim-bursement	Purchase of Service	Other Arrangements**
To accept or maintain employment							
To prepare for JOBS							
To participate in JOBS							
To participate in approved education and training in non-JOBS areas							
TRANSITIONAL							
Employed and off AFDC							

* *Caretaker relative*

** *Described in ATTACHMENT 3.5-B*

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS

402(g)(1)(A)
255.6

Section 3.6 - Methods of Providing Child Care for Tribal Entities

The State arranges child care as indicated below:

[All categories that apply are marked with an "X".]

TYPE	Regular		For Handicapped (Special Needs)	
	Relative	Nonrelative	Relative	Nonrelative
Center Care*				
Group Family Day Care				
Family Day Care				
In-Home Care				

*Including child care provided on school sites.

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
402(g)(3)(B)(i) 255.4(a)(2) and (3) 255.1(i)	Section 3.7 - Methodology Used to Establish Local Market Rates A description of the methodology used for establishing local market rates for child care, including (1) sample size and selection and (2) definition(s) of local market areas (e.g. political subdivisions, alternative regional areas) follows: A. Regulated Child Care

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 3.7 - Methodology Used to Establish Local Market Rates (cont'd) B. Unregulated Child Care (if different)

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 3.7 - Methodology Used to Establish Local Market Rates (cont'd) C. Handicapped (Special Needs) Child Care (if different) The local market rates established for each type of care, as described at §255.4(a)(3), are on file with the FSA Regional Office as of _____ (date), and will be updated periodically, but not less than biennially.

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
402(g)(1)(C)(i)(II) 255.4(a)(1)(i) 255.1(b)	Section 3.8 - Statewide Limit(s) The State has established a statewide limit (or limits) for the amount of payment or reimbursement for child care. [ ] no; the State limits payment or reimbursement to the amount of the disregard [ ] yes; [ ] there is one statewide limit for child care. It is: $_____per month [ ] there are two statewide limits for child care. They are: For children under 2: $ _____per month For children age 2 and over: $_____per month

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period _____ through _____

CITATIONS	
402(g)(1)(C)(i)(II 255.4(a)(1)(ii)	Section 3.8 - Statewide Limit(s) (cont'd) The State has established a different statewide limit (or limits) for handicapped (special needs) child care. [ ] no [ ] yes; [ ] there is one statewide limit for handicapped (special needs) child care. It is: $_____per month [ ] there are two statewide limits for handicapped (special needs) child care. They are: For children under 2: $_____per month For children age 2 and over: $_____per month

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
402(g)(7) 255.3(h)(1) 255.1(j)	Section 3.9 - Coordination of Child Care A description of coordination with existing child care resource and referral agencies and with early childhood education programs, including Head Start programs, preschool programs funded under Chapter I of the Education Consolidation and Improvement Act of 1981, and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children) follows:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
402(g)(4) 255.5(a) 255.1(1)	Section 3.10 - Basic Health and Safety The State has procedures for ensuring that center-based care will be (or is) subject to State and local requirements for basic health and safety, including fire safety, protections. [ ] yes; a description of the procedures follows: [ ] no; the following is the plan for developing such procedures:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period _____ through _____

SECTION 4 - OTHER SUPPORTIVE SERVICES

CITATIONS
402(g)(2)
255.1(c); 255.2(c)(1)&(2); 255.3(g)

Section 4.1 - Supportive Services (Other than Child Care) and Work-Related Expenses

CODES:

TYPE OF SERVICE	ELIGIBILITY CATEGORY
A - Supportive Service B - Work-Related Expense C - One Time Work-Related Expense (if "C", basis for determining need is not required)	1 - To Accept or Maintain Employment 2 - To Prepare for JOBS 3 - To Participate in JOBS 4 - To Participate in Approved Education or Training in non-JOBS Areas 5 - Employed and Off AFDC (transitional)

SERVICE OR EXPENSE AND BASIS FOR NEED	TYPE OF SERVICE	ELIGIBILITY CATEGORY	$ LIMIT (no less than weekly)	METHOD OF PROVISION					
				At no cost to IV-A	Directly	Cash/voucher in advance	Cash Reimbursement	Purchase of service	Other
	Enter appropriate code(s)			Indicate with an "X"					
Service or Expense: _____ Basis for Determining Need:									
Service or Expense: _____ Basis for Determining Need:									

[APPEND ADDITIONAL PAGES AS NEEDED]

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period _____ through _____

SERVICE OR EXPENSE AND BASIS FOR NEED (continued)	TYPE OF SERVICE	ELIGIBILITY CATEGORY	$ LIMIT (no less than weekly)	METHOD OF PROVISION					
				At no cost to IV-A	Directly	Cash/voucher in advance	Cash Reimbursement	Purchase of service	Other
	Enter appropriate code(s)			Indicate with an "X"					
Service or Expense: _____ Basis for Determining Need:									
Service or Expense: _____ Basis for Determining Need:									
Service or Expense: _____ Basis for Determining Need:									
Service or Expense: _____ Basis for Determining Need:									

[APPEND ADDITIONAL PAGES AS NEEDED]

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 4.2 - Coordination of Supportive Services (Other than Child Care)
255.3(h)(2) 255.1(j)	A description of coordination of the supportive services (other than child care) provided by the State IV-A agency and related services provided by other agencies follows:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period _____ through _____

CITATIONS	
	SECTION 5 - OPTIONAL STATE PROVISIONS Section 5.1 - Services During Gaps in Participation
255.2(d) 255.1(g)(1)	The State elects to provide child care or other supportive services, or both, to individuals who are waiting to enter an approved education, training (including such activities in non-JOBS areas), or JOBS component, or employment pursuant to §255.2(d). Child Care: [ ] no [ ] yes; the following is the policy for its provision, including time limits: Other Supportive Services: [ ] no [ ] yes; the following is the policy for its provision, including time limits:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 5.2 - Transitional Supportive Services
250.73(e)(1) 255.1(g)(2)	The State elects to provide up to 90 days of transitional supportive services. [ ] no [ ] yes; the following is the policy for its provision, including time limits and types of services allowed:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
255.2(c)(3) 255.1(h)	Section 5.3 - One-Time Work Related Expenses in JOBS Areas The State elects to provide one-time work related expenses which are necessary for an applicant or recipient to accept or maintain employment in JOBS areas. [ ] no [ ] yes; the policy on provision of such expenses is:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	SECTION 6 - CHILD CARE AND OTHER SUPPORTIVE SERVICES IN NON-JOBS AREAS Section 6.1 - Child Care and Other Supportive Services in Non-JOBS Areas
255.2(a)(2) 255.2(c)(2) 255.1(d)(1)	The State elects to approve non-JOBS education and training activities for child care and other supportive services in non-JOBS areas. [ ] no [ ] yes; [ ] the State's criteria for approval are limited to (1) individual's education or training is consistent with appropriate employment goals and (2) individual is making satisfactory progress; or [ ] in addition to the criteria as stated above, the State's criteria are: AND
255.1(d)(2)(i)	According to the following procedures:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 6.2 - One-Time Work Related Expenses in Non-JOBS Areas
255.1(d)(2)(ii)	The State elects to provide one-time work related expenses which are necessary for an applicant or recipient to accept or maintain employment in non-JOBS areas. [ ] no [ ] yes; the procedures under which IV-A staff will approve such expenses are:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	SECTION 7 - TRANSITIONAL CHILD CARE Section 7.1 - Requesting or Applying for Transitional Child Care
256.2(b)(3) 256.1(a)(4)	The process(es) by which families request or apply for 12 months of transitional child care is (are):

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 7.2 - Sliding Fee Scale for Transitional Child Care
402(g)(3)(A)(vii) 256.3(a) and (b) 256.1(a)(2)	The transitional child care sliding fee scale is provided in Attachment 7.2.

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	
	Section 7.3 - Collection of Fees for Transitional Child Care
256.3(c) and (d) 256.1(a)(3)	The methods and procedures for ensuring the collection of transitional child care fees is:

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

PROPOSED PRE-PRINT
JANUARY 1990

_____ STATE PLAN for SUPPORTIVE SERVICES (Title IV-A/F)
[state name]

for the period_____ through _____

CITATIONS	ATTACHMENT

TN # _____ Approval Date _____ Effective Date _____

Supersedes
TN # _____

[FR Doc. 90-1280 Filed 1-18-90; 8:45 am]
BILLING CODE 4150-04-C

federal register

Friday
January 19, 1990

Part VI

Reader Aids

Cumulative List of Public Laws—First Session of the 101st Congress

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 101st Congress. The List of Public Laws will resume when bills are enacted into law during the second session of the 101st Congress, which convenes on January 23, 1990. Any comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408.

Public Law	Bill	Approval Date	103 Stat.	Title	Price
101-1	H.J. Res. 129	Feb. 7	3	Disapproving the increases in executive, legislative, and judicial salaries recommended by the President under section 225 of the Federal Salary Act of 1967.	$1.00
101-2	H.J. Res. 22	Mar. 15	4	To designate the week beginning March 6, 1989, as "Federal Employees Recognition Week".	$1.00
101-3	S.J. Res. 64	Mar. 21	5	To designate March 25, 1989, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".	$1.00
101-4	H.J. Res. 117	Mar. 23	6	To proclaim March 20, 1989, as "National Agriculture Day"	$1.00
101-5	H.J. Res. 167	Mar. 23	7	To designate March 16, 1989, as "Freedom of Information Day"	$1.00
101-6	H.J. Res. 148	Mar. 24	8	Designating the month of March in both 1989 and 1990 as "Women's History Month".	$1.00
101-7	S. 553	Mar. 29	9	To provide for more balance in the stocks of dairy products purchased by the Commodity Credit Corporation.	$1.00
101-8	S.J. Res. 87	Mar. 29	10	To commend the Governments of Israel and Egypt on the occasion of the tenth anniversary of the Treaty of Peace between Israel and Egypt.	$1.00
101-9	H.R. 1373	Mar. 31	12	To authorize the Agency for International Development to pay the expenses of an election observer mission for the 1989 presidential election in Panama.	$1.00
101-10	S.J. Res. 50	Apr. 2	13	To designate the week beginning April 2, 1989, as "National Child Care Awareness Week".	$1.00
101-11	H.R. 829	Apr. 7	15	Wildfire Suppression Assistance Act.	$1.00
101-12	S. 20	Apr. 10	16	Whistleblower Protection Act of 1989.	$1.00
101-13	S.J. Res. 43	Apr. 13	36	Designating April 9, 1989, as "National Former Prisoners of War Recognition Day"	$1.00
101-14	H.R. 1750	Apr. 18	37	To implement the Bipartisan Accord on Central America of March 24, 1989.	$1.00
101-15	H.J. Res. 173	Apr. 18	41	To designate April 16, 1989, and April 6, 1990, as "Education Day, U.S.A.".	$1.00
101-16	H.J. Res. 102	Apr. 19	43	To designate April 1989 as "National Recycling Month"	$1.00
101-17	H.R. 666	Apr. 20	45	To allow an obsolete Navy drydock to be transferred to the city of Jacksonville, Florida, before the expiration of the otherwise applicable 60-day congressional review period.	$1.00
101-18	H.J. Res. 112	Apr. 20	46	Designating April 23, 1989, through April 29, 1989, and April 23, 1990, through April 29, 1990, as "National Organ and Tissue Donor Awareness Week".	$1.00
101-19	S.J. Res. 45	May 1	47	Designating May 1989 as "Older Americans Month"	$1.00
101-20	S.J. Res. 92	May 1	48	To invite the houses of worship of this Nation to celebrate the bicentennial of the inauguration of George Washington, the first President of the United States, by ringing bells at 12 noon on Sunday, April 30, 1989.	$1.00
101-21	S.J. Res. 60	May 2	49	To designate the period commencing on May 1, 1989, and ending on May 7, 1989, as "National Drinking Water Week".	$1.00
101-22	S.J. Res. 84	May 2	50	To designate April 30, 1989, as "National Society of the Sons of the American Revolution Centennial Day".	$1.00
101-23	S.J. Res. 52	May 2	51	To express gratitude for law enforcement personnel.	$1.00
101-24	H.J. Res. 124	May 3	52	To recognize the seventy-fifth anniversary of the Smith-Lever Act of May 8, 1914, and its role in establishing our Nation's system of State Cooperative Extension Services.	$1.00
101-25	S.J. Res. 25	May 5	53	To designate the week of May 7, 1989, through May 14, 1989, as "Jewish Heritage Week".	$1.00
101-26	H.R. 678	May 11	54	To make a correction in the Education and Training for a Competitive America Act of 1988.	$1.00
101-27	S.J. Res. 62	May 11	56	Designating May 1989 as "National Stroke Awareness Month"	$1.00
101-28	S. 968	May 15	57	To delay the effective date of section 27 of the Office of Federal Procurement Policy Act.	$1.00
101-29	S.J. Res. 37	May 17	58	Designating the week beginning May 14, 1989, and the week beginning May 13, 1990, as "National Osteoporosis Prevention Week".	$1.00
101-30	H.R. 1385	May 17	60	Martin Luther King, Jr., Federal Holiday Commission Extension Act.	$1.00
101-31	H.J. Res. 135	May 22	63	To designate the week beginning May 7, 1989, as "National Correctional Officers Week".	$1.00
101-32	S.J. Res. 58	May 22	64	To designate May 17, 1989, as "High School Reserve Officer Training Corps Recognition Day".	$1.00
101-33	S.J. Res. 68	May 23	65	To designate the month of May 1989, as "Trauma Awareness Month".	$1.00
101-34	H.J. Res. 170	May 25	66	Designating May 1989, as "National Digestive Disease Awareness Month".	$1.00
101-35	H.J. Res. 247	May 25	68	Designating May 29, 1989, as the "National Day of Remembrance for the Victims of the USS IOWA".	$1.00
101-36	S.J. Res. 128	June 9	69	Authorizing a first strike ceremony at the United States Capitol for the Bicentennial of the Congress Commemorative Coin.	$1.00
101-37	S. 767	June 15	70	Business Opportunity Development Reform Act Technical Corrections Act.	$1.00
101-38	H.J. Res. 274	June 19	78	To designate the week beginning June 11, 1989, as "National Scleroderma Awareness Week".	$1.00
101-39	S.J. Res. 63	June 19	79	Designating June 14, 1989, as "Baltic Freedom Day", and for other purposes.	$1.00
101-40	H.R. 964	June 20	81	To correct an error in Private Law 100-29 (relating to certain lands in Lamar County, Alabama) and to make technical corrections in certain other provisions of law.	$1.00
101-41	H.R. 932	June 21	83	Puyallup Tribe of Indians Settlement Act of 1989.	$1.00
101-42	H.R. 881	June 28	91	Coquille Restoration Act.	$1.00
101-43	H.J. Res. 111	June 28	95	Designating June 23, 1989, as "United States Coast Guard Auxiliary Day"	$1.00
101-44	H.R. 2344	June 30	96	To authorize the transfer to the Republic of the Philippines of two excess naval vessels.	$1.00
101-45	H.R. 2402	June 30	97	Dire Emergency Supplemental Appropriations and Transfers, Urgent Supplementals, and Correcting Enrollment Errors Act of 1989.	$1.25
101-46	S. 694	June 30	132	To extend title I of the Energy Policy and Conservation Act.	$1.00
101-47	S. 1077	June 30	134	To authorize the President to appoint Admiral James B. Busey to the Office of Administrator of the Federal Aviation Administration.	$1.00
101-48	S. 1180	June 30	136	To authorize the President to appoint Rear Admiral Richard Harrison Truly to the Office of Administrator of the National Aeronautics and Space Administration.	$1.00
101-49	S. 1184	June 30	138	To allow the obsolete destroyer United States ship Edson (DD 946) to be transferred to the Intrepid Sea-Air-Space Museum in New York before the expiration of the otherwise applicable sixty-day congressional review period.	$1.00

Public Law	Bill	Approval Date	103 Stat.	Title	Price
101-50	S.J. Res. 96	June 30	139	Designating July 2, 1989, as "National Literacy Day".	$1.00
101-51	H.R. 923	July 6	141	To redesignate the Federal hydropower generating facilities located at Dam B on the Neches River at Town Bluff, Texas, as the "Robert Douglas Willis Hydropower Project".	$1.00
101-52	H.J. Res. 132	July 6	142	To designate the second Sunday in October 0f 1989 as "National Children's Day".	$1.00
101-53	H.R. 2119	July 6	144	To authorize the exchange of certain Federal public land in Madison County, Illinois.	$1.00
101-54	H.J. Res. 276	July 7	146	Designating September 14, 1989, as "National D.A.R.E. Day".	$1.00
101-55	H.J. Res. 298	July 7	148	Designating July 14, 1989, as "National Day To Commemorate the Bastile Day Bicentennial".	$1.00
101-56	H.R. 2848	July 19	149	Computer Matching and Privacy Protection Act Amendments of 1989.	$1.00
101-57	S.J. Res. 95	July 21	151	To designate the week of September 10, 1989, through September 16, 1989, as "National Check-Up Week".	$1.00
101-58	H.J. Res. 174	July 25	152	To designate the decade beginning January 1, 1990, as the "Decade of the Brain".	$1.00
101-59	S.J. Res. 137	July 25	155	Designating January 7, 1990, through January 13, 1990, as "National Law Enforcement Training Week".	$1.00
101-60	H.R. 1722	July 26	157	Natural Gas Wellhead Decontrol Act of 1989.	$1.00
101-61	S.J. Res. 85	July 26	160	To designate the week of July 24 to July 30, 1989, as the "National Week of Recognition and Remembrance for Those Who Served in the Korean War".	$1.00
101-62	H.R. 2214	July 26	162	To ratify certain agreements relating to the Vienna Convention on Diplomatic Relations.	$1.00
101-63	S.J. Res. 110	July 27	163	Designating October 5, 1989, as "Raoul Wallenberg Day".	$1.00
101-64	S.J. Res. 93	July 27	165	To designate October 1989 as "Polish American Heritage Month".	$1.00
101-65	S.J. Res. 129	July 28	166	To provide for the designation of September 15, 1989, as "National POW/MIA Recognition Day".	$1.00
101-66	S.J. Res. 142	July 28	167	Designating the week beginning July 23, 1989, as "Lyme Disease Awareness Week".	$1.00
101-67	H.R. 1485	July 31	168	Apex Project, Nevada Land Transfer and Authorization Act of 1989.	$1.00
101-68	H.R. 310	Aug. 1	175	To remove a restriction from a parcel of land in Roanoke, Virginia, in order for that land to be conveyed to the State of Virginia for use as a veterans nursing home.	$1.00
101-69	S.J. Res. 150	Aug. 2	176	To designate August 1, 1989, as "Helsinki Human Rights Day".	$1.00
101-70	H.R. 999	Aug. 3	180	To reauthorize the Advisory Council on Historic Preservation.	$1.00
101-71	H.R. 968	Aug. 4	181	Noise Reduction Reimbursement Act of 1989.	$1.00
101-72	H.R. 3024	Aug. 7	182	To increase the statutory limit on the public debt, and for other purposes.	$1.00
101-73	H.R. 1278	Aug. 9	183	Financial Institutions Reform, Recovery, and Enforcement Act of 1989.	$11.00
101-74	H.J. Res. 281	Aug. 9	554	To approve the designation of the Cordell Bank National Marine Sanctuary, to disapprove a term of that designation, to prohibit the exploration for, or the development or production of, oil, gas, or minerals in any area of that sanctuary, and for other purposes.	$1.00
101-75	S.J. Res. 136	Aug. 10	555	Designating August 8, 1989, as "National Neighborhood Crime Watch Day".	$1.00
101-76	H.R. 2705	Aug. 11	556	Relating to the method by which Government contributions to the Federal employees health benefits program shall be computed for 1990 or 1991 if no Government-wide indemnity benefit plan participates in that year.	$1.00
101-77	H.J. Res. 363	Aug. 11	558	To designate 1989 as "United States Customs Service 200th Anniversary Year".	$1.00
101-78	S.J. Res. 78	Aug. 11	559	To designate the month of November 1989 and 1990 as "National Hospice Month".	$1.00
101-79	S.J. Res. 126	Aug. 11	560	Commemorating the bicentennial of the United States Coast Guard.	$1.00
101-80	S.J. Res. 127	Aug. 11	561	Designating Labor Day weekend, September 2 through 4, 1989, as "National Drive for Life Weekend".	$1.00
101-81	H.R. 2799	Aug. 14	563	To amend the Agricultural Act of 1949 for the 1990 crops to allow the planting of alternative crops on permitted acreage and to amend the provisions regarding the designation of farm acreage base as acreage base established for oats.	$1.00
101-82	H.R. 2467	Aug. 14	564	Disaster Assistance Act of 1989.	$1.00
101-83	H.J. Res. 221	Aug. 14	589	To designate the week beginning September 1, 1989, as "World War II Remembrance Week".	$1.00
101-84	S.J. Res. 55	Aug. 14	590	To designate the week of October 1, 1989, through October 7, 1989, as "Mental Illness Awareness Week".	$1.00
101-85	S.J. Res. 67	Aug. 14	592	To commemorate the twenty-fifth anniversary of the Wilderness Act of 1964 which established the National Wilderness Preservation System.	$1.00
101-86	H.R. 1860	Aug. 16	593	To provide that a Federal annuitant or former member of a uniformed service who returns to Government service, under a temporary appointment, to assist in carrying out the 1990 decennial census of population shall be exempt from certain provisions of title 5, United States Code, relating to offsets from pay and other benefits.	$1.00
101-87	H.R. 2847	Aug. 16	595	To extend by 1 year a program under which the Government is allowed to accept the voluntary services of private-sector executives.	$1.00
101-88	H.J. Res. 225	Aug. 16	596	To authorize and request the President to issue a proclamation designating the third Sunday of August of 1989 as "National Senior Citizens Day".	$1.00
101-89	H.J. Res. 231	Aug. 16	597	Designating September 1989 as "National Library Card Sign-Up Month".	$1.00
101-90	H.J. Res. 253	Aug. 16	598	Designating September 8, 1989, as "National Pledge of Allegiance Day".	$1.00
101-91	H.J. Res. 379	Aug. 16	599	Commending the citizens of the Sioux City, Iowa, tri-State area for their heroism and spirit of volunteerism in selflessly providing assistance and life-saving services to the passengers and crew of United Airlines Flight 232.	$1.00
101-92	H.R. 840	Aug. 16	601	To authorize appropriations for fiscal year 1990 for the Federal Maritime Commission, and for other purposes.	$1.00
101-93	H.R. 1426	Aug. 16	603	Drug Abuse Treatment Technical Corrections Act of 1989.	$1.00
101-94	H.R. 2727	Aug. 16	617	Court of Veterans Appeals Judges Retirement Act.	$1.00
101-95	S.J. Res. 109	Sept. 13	630	To designate the period commencing September 11, 1989, and ending on September 15, 1989, as "National Historically Black Colleges Week".	$1.00
101-96	S.J. Res. 132	Sept. 15	631	Designating September 1 through 30, 1989 as "National Alcohol and Drug Treatment Month".	$1.00
101-97	H.R. 2136	Sept. 23	633	District of Columbia Civil Contempt Imprisonment Limitation Act of 1989.	$1.00
101-98	H.J. Res. 133	Sept. 26	636	Designating the week beginning September 17, 1989, as "Emergency Medical Services Week".	$1.00
101-99	S. 1075	Sept. 26	637	To authorize appropriations for the American Folklife Center for fiscal years 1990, 1991, and 1992.	$1.00
101-100	H.J. Res. 407	Sept. 29	638	Making continuing appropriations for the fiscal year 1990, and for other purposes.	$1.00
101-101	H.R. 2696	Sept. 29	641	Energy and Water Development Appropriations Act, 1990.	$1.00

Public Law	Bill	Approval Date	103 Stat.	Title	Price
101-102	H.J. Res. 204	Sept. 29	668	To designate October 1989, as "National Quality Month".	$1.00
101-103	H.R. 3282	Sept. 30	670	Performance Management and Recognition System Reauthorization Act of 1989.	$1.00
101-104	S.J. Res. 146	Oct. 2	673	Designating the week of September 24, 1989, as "Religious Freedom Week".	$1.00
101-105	H.R. 419	Oct. 2	675	To provide for the addition of certain parcels to the Harry S Truman National Historic Site in the State of Missouri.	$1.00
101-106	H.R. 1529	Oct. 2	677	To provide for the establishment of the Ulysses S. Grant National Historic Site in the State of Missouri, and for other purposes.	$1.00
101-107	S.J. Res. 118	Oct. 3	679	Designating October 6, 1989, as "German-American Day".	$1.00
101-108	H.R. 2835	Oct. 6	680	To provide for the relocation of certain facilities at the Gateway National Recreation Area, Sandy Hook, New Jersey, and for other purposes.	$1.00
101-109	S. 85	Oct. 6	681	To authorize the acceptance of certain lands for addition to Harpers Ferry National Historical Park, West Virginia.	$1.00
101-110	S. 1709	Oct. 6	682	To provide interim extensions of Department of Veterans Affairs programs of respite care for certain veterans, community-based residential care for homeless, chronically mentally ill veterans, State home construction grants, and leave transfers for certain health-care professionals, and of Department of Veterans Affairs home-loan fees.	$1.00
101-111	S.J. Res. 117	Oct. 6	684	To designate the week of November 19, 1989, through November 25, 1989, and the week of November 18, 1990, through November 24, 1990, as "National Family Week".	$1.00
101-112	S.J. Res. 133	Oct. 6	685	Designating October 1989 as "National Domestic Violence Awareness Month".	$1.00
101-113	S.J. Res. 138	Oct. 6	687	Designating October 16, 1989, and October 16, 1990, as "World Food Day".	$1.00
101-114	S.J. Res. 148	Oct. 6	690	To designate the week of October 8, 1989, through October 14, 1989, as "National Job Skills Week".	$1.00
101-115	H.R. 1486	Oct. 13	691	To authorize appropriations for fiscal year 1990 for the Maritime Administration, and for other purposes.	$1.00
101-116	S.J. Res. 81	Oct. 13	696	To designate the week of October 1 through 7, 1989, as "National Health Care Food Service Week".	$1.00
101-117	S.J. Res. 122	Oct. 13	697	To designate October 1989 and 1990 as "National Down Syndrome Month".	$1.00
101-118	H.R. 2358	Oct. 17	698	To authorize appropriations for fiscal year 1990 for the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives, and for other purposes.	$1.00
101-119	H.R. 3385	Oct. 21	699	To provide assistance for free and fair elections in Nicaragua.	$1.00
101-120	H.R. 1300	Oct. 23	700	Head Start Supplemental Authorization Act of 1989.	$1.00
101-121	H.R. 2788	Oct. 23	701	Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1990, and for other purposes..	$1.50
101-122	H.J. Res. 400	Oct. 23	757	Designating October 27, 1989, as "National Hostage Awareness Day".	$1.00
101-123	S. 248	Oct. 23	759	Major Fraud Act Amendments of 1989.	$1.00
101-124	S.J. Res. 213	Oct. 24	761	To designate October 22 through October 29, 1989, as "National Red Ribbon Week for a Drug-Free America".	$1.00
101-125	H.R. 2987	Oct. 24	763	To name the Department of Veterans Affairs medical center in Leavenworth, Kansas, as the "Dwight D. Eisenhower Department of Veterans Affairs Medical Center".	$1.00
101-126	H.R. 2087	Oct. 25	764	Child Abuse Prevention Challenge Grants Reauthorization Act of 1989.	$1.00
101-127	H.R. 2088	Oct. 25	770	Children With Disabilities Temporary Care Reauthorization Act of 1989.	$1.00
101-128	H.J. Res. 392	Oct. 25	773	Designating October 1989 as "Italian-American Heritage and Culture Month".	$1.00
101-129	H.J. Res. 401	Oct. 25	774	To designate the month of October 1989 as "Country Music Month".	$1.00
101-130	H.J. Res. 423	Oct. 26	775	Making further continuing appropriations for the fiscal year 1990, and for other purposes.	$1.00
101-131	H.R. 2978	Oct. 28	777	Flag Protection Act of 1989.	$1.00
101-132	H.R. 801	Oct. 30	778	To designate the United States Court of Appeals Building at 56 Forsyth Street in Atlanta, Georgia, as the "Elbert P. Tuttle United States Court of Appeals Building".	$1.00
101-133	H.J. Res. 380	Oct. 30	779	Designating October 18, 1989, as "Patient Account Management Day".	$1.00
101-134	S. 1792	Oct. 30	780	To amend the Disaster Assistance Act of 1989 to avoid penalizing producers who planted a replacement crop on disaster-affected acreage, and for other purposes.	$1.00
101-135	S.J. Res. 177	Oct. 30	782	To designate October 29, 1989, as "Fire Safety At Home--Change Your Clock, Change Your Battery Day".	$1.00
101-136	H.R. 2989	Nov. 3	783	Treasury, Postal Service and General Government Appropriations Act, 1990.	$1.25
101-137	H.R. 3261	Nov. 3	824	To reauthorize the National Flood Insurance Program, the Federal Crime Insurance Program, and the Defense Production Act of 1950, to extend certain housing programs, and for other purposes.	$1.00
101-138	S.J. Res. 86	Nov. 3	827	Designating November 17, 1989, as "National Philanthropy Day".	$1.00
101-139	S.J. Res. 120	Nov. 3	828	To designate the period commencing November 12, 1989, and ending November 18, 1989, as "Geography Awareness Week".	$1.00
101-140	H.J. Res. 280	Nov. 8	830	Increasing the statutory limit on the public debt.	$1.00
101-141	S.J. Res. 19	Nov. 8	836	To designate November 8, 1989, as "Montana Centennial Day".	$1.00
101-142	H.J. Res. 241	Nov. 8	837	Designating October 25, 1989, as "National Arab-American Day".	$1.00
101-143	H.J. Res. 131	Nov. 8	838	To designate May 25, 1989, as "National Tap Dance Day".	$1.00
101-144	H.R. 2916	Nov. 9	839	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990.	$1.25
101-145	S.J. Res. 131	Nov. 9	875	To designate November 1989 as "National Diabetes Month".	$1.00
101-146	S.J. Res. 209	Nov. 9	876	To designate November 11, 1989 as "Washington Centennial Day".	$1.00
101-147	H.R. 24	Nov. 10	877	Child Nutrition and WIC Reauthorization Act of 1989.	$1.25
101-148	H.R. 3012	Nov. 10	920	Making appropriations for military construction for the Department of Defense for the fiscal year ending September 30, 1990, and for other purposes.	$1.00
101-149	S.J. Res. 73	Nov. 13	929	To designate the week beginning October 29, 1989, as "Gaucher's Disease Awareness Week".	$1.00
101-150	S.J. Res. 194	Nov. 13	930	Designating November 12 through 18, 1989 as "National Glaucoma Awareness Week".	$1.00
101-151	S.J. Res. 198	Nov. 14	931	Designating November 1989 as "An End to Hunger Education Month".	$1.00
101-152	H.R. 3318	Nov. 15	932	To redesignate the Federal building in Houston, Texas, known as the Concorde Tower, as the "George Thomas 'Mickey' Leland Federal Building".	$1.00
101-153	H.J. Res. 35	Nov. 15	933	Designating November 5-11, 1989, as "National Women Veterans Recognition Week".	$1.00
101-154	H.J. Res. 435	Nov. 15	934	Making further continuing appropriations for the fiscal year 1990, and for other purposes.	$1.00
101-155	S. 750	Nov. 15	935	To extend the deadlines under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Washington.	$1.00

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101-156	S. 1827	Nov. 16	936	To revise and clarify the authority of the Administrator of General Services relating to the acquisition and management of certain property in the city of New York.	$1.00
101-157	H.R. 2710	Nov. 17	938	Fair Labor Standards Amendments of 1989.	$1.00
101-158	H.R. 3287	Nov. 17	946	District of Columbia Revenue Bond Act of 1989.	$1.00
101-159	H.J. Res. 425	Nov. 17	948	Designating November 12 through 18, 1989, as "Community Foundation Week"	$1.00
101-160	S.J. Res. 215	Nov. 17	949	Acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 20, 1989, as "National Military Families Recognition Day".	$1.00
101-161	H.R. 2883	Nov. 21	951	Rural Development, Agriculture, and Related Agencies Appropriations Act, 1990.	$1.25
101-162	H.R. 2991	Nov. 21	988	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1990.	$1.50
101-163	H.R. 3014	Nov. 21	1041	Legislative Branch Appropriations Act, 1990.	$1.00
101-164	H.R. 3015	Nov. 21	1069	Department of Transportation and Related Agencies Appropriations Act, 1990.	$1.25
101-165	H.R. 3072	Nov. 21	1112	Department of Defense Appropriations Act, 1990	$1.50
101-166	H.R. 3566	Nov. 21	1159	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990.	$1.25
101-167	H.R. 3743	Nov. 21	1195	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990.	$2.00
101-168	H.R. 3746	Nov. 21	1267	District of Columbia Appropriations Act, 1990.	$1.00
101-169	H.J. Res. 278	Nov. 21	1285	To designate the period commencing on November 20, 1989, and ending on November 26, 1989, as "National Adoption Week".	$1.00
101-170	H.J. Res. 282	Nov. 21	1287	Designating November 19-25, 1989, as "National Family Caregivers Week"	$1.00
101-171	H.R. 2642	Nov. 22	1289	Southeast Interstate Low-Level Radioactive Waste Compact Amendments Consent Act of 1989.	$1.00
101-172	H.R. 3544	Nov. 22	1291	To authorize the transfer of a specified naval landing ship dock to the Government of Brazil under the leasing authority of chapter 6 of the Arms Export Control Act..	$1.00
101-173	H.R. 215	Nov. 27	1292	To amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a Federal employee.	$1.00
101-174	H.J. Res. 291	Nov. 27	1293	Designating November 16, 1989, as "Interstitial Cystitis Awareness Day".	$1.00
101-175	S. 931	Nov. 27	1294	Genesee River Protection Act of 1989.	$1.00
101-176	S.J. Res. 184	Nov. 27	1295	To designate the periods commencing on November 26, 1989, and ending on December 2, 1989, and commencing on November 25, 1990, and ending on December 1, 1990, as "National Home Care Week".	$1.00
101-177	H.R. 1310	Nov. 28	1296	To redesignate a certain portion of the George Washington Memorial Parkway as the "Clara Barton Parkway".	$1.00
101-178	H.R. 2120	Nov. 28	1297	To amend the Deep Seabed Hard Mineral Resources Act to authorize appropriations to carry out the provisions of the Act for fiscal years 1990, 1991, 1992, 1993, and 1994..	$1.00
101-179	H.R. 3402	Nov. 28	1298	Support for East European Democracy (SEED) Act of 1989	$1.00
101-180	H.R. 3532	Nov. 28	1325	Civil Rights Commission Reauthorization Act of 1989.	$1.00
101-181	H.J. Res. 357	Nov. 28	1326	Providing for the reappointment of Samuel Curtis Johnson as a citizen regent of the Board of Regents of the Smithsonian Institution.	$1.00
101-182	H.J. Res. 358	Nov. 28	1327	Providing for the reappointment of Jeannine Smith Clark as a citizen regent of the Board of Regents of the Smithsonian Institution.	$1.00
101-183	H.J. Res. 393	Nov. 28	1328	To grant the consent of Congress to the boundary change compact between South Dakota and Nebraska.	$1.00
101-184	S. 818	Nov. 28	1334	To commemorate the contributions of Senator Clinton P. Anderson to the establishment of the National Wilderness Preservation System, and for other purposes.	$1.00
101-185	S. 978	Nov. 28	1336	National Museum of the American Indian Act.	$1.00
101-186	S.J. Res. 159	Nov. 28	1348	To designate April 22, 1990, as Earth Day, and to set aside the day for public activities promoting preservation of the global environment.	$1.00
101-187	S.J. Res. 207	Nov. 28	1350	Approving the location of the memorial to the women who served in Vietnam.	$1.00
101-188	S.J. Res. 218	Nov. 28	1351	To designate the week of December 3, 1989, through December 9, 1989, as "National American Indian Heritage Week".	$1.00
101-189	H.R. 2461	Nov. 29	1352	National Defense Authorization Act for Fiscal Years 1990 and 1991.	$10.00
101-190	S. 1390	Nov. 29	1691	To provide for the construction of biomedical facilities in order to ensure a continued supply of specialized strains of mice essential to biomedical research in the United States, and for other purposes.	$1.00
101-191	S. 338	Nov. 29	1697	To authorize the Secretary of the Interior to provide for the development of a trails interpretation center in the city of Council Bluffs, Iowa, and for other purposes.	$1.00
101-192	S. 737	Nov. 29	1700	To adjust the boundary of Rocky Mountain National Park.	$1.00
101-193	H.R. 2748	Nov. 30	1701	Intelligence Authorization Act, Fiscal Year 1990.	$1.00
101-194	H.R. 3660	Nov. 30	1716	Ethics Reform Act of 1989.	$2.00
101-195	S. 974	Dec. 5	1784	Nevada Wilderness Protection Act of 1989.	$1.00
101-196	S.J. Res. 16	Dec. 5	1790	Designating November 1989 and November 1990 as "National Alzheimer's Disease Month".	$1.00
101-197	S.J. Res. 205	Dec. 5	1791	Designating December 3 through 9, 1989, as "National Cities Fight Back Against Drugs Week".	$1.00
101-198	H.J. Res. 448	Dec. 6	1792	Making supplemental appropriations for the fiscal year 1990, and for other purposes.	$1.00
101-199	H.R. 481	Dec. 6	1793	To designate the building located at 2562 Hylan Boulevard, Staten Island, New York, as the "Walter Edward Grady United States Post Office Building".	$1.00
101-200	H.R. 3294	Dec. 6	1794	To authorize distribution within the United States of the United States Information Agency film entitled "A Tribute to Mickey Leland".	$1.00
101-201	S. 892	Dec. 6	1795	To exclude Agent Orange settlement payments from countable income and resources under Federal means-tested programs.	$1.00
101-202	S. 1960	Dec. 6	1796	To authorize the food stamp portion of the Minnesota Family Investment Plan.	$1.00
101-203	H.R. 972	Dec. 7	1805	To amend section 3724 of title 31, United States Code, to increase the authority of the Attorney General to settle claims for damages resulting from law enforcement activities of the Department of Justice.	$1.00
101-204	H.R. 1312	Dec. 7	1806	Domestic Volunteer Service Act Amendments of 1989.	$1.00
101-205	H.R. 2134	Dec. 7	1829	To amend the Federal Meat Inspection Act and the Poultry Inspection Act to authorize the distribution of wholesome meat and poultry products for human consumption that are not in compliance with the Acts to charity and public agencies.	$1.00
101-206	H.R. 3720	Dec. 7	1832	National Consumer Cooperative Bank Amendments of 1989.	$1.00

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101-207	S. 1164	Dec. 7	1833	To authorize appropriations for fiscal year 1990 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Customs Service.	$1.00
101-208	S. 1877	Dec. 7	1836	To improve the operational efficiency of the James Madison Memorial Fellowship Foundation, and for other purposes.	$1.00
101-209	S.J. Res. 164	Dec. 7	1838	Designating 1990 as the "International Year of Bible Reading".	$1.00
101-210	S.J. Res. 203	Dec. 7	1839	Providing for the appointment of Homer Alfred Neal as a citizen regent of the Board of Regents of the Smithsonian Institution.	$1.00
101-211	S.J. Res. 202	Dec. 7	1840	Providing for the appointment of Robert James Woolsey, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.	$1.00
101-212	H.J. Res. 429	Dec. 11	1841	To designate the week of December 10, 1989, through December 16, 1989, as "National Drunk and Drugged Driving Awareness Week".	$1.00
101-213	H.R. 422	Dec. 11	1843	Local Rail Service Reauthorizing Act.	$1.00
101-214	H.R. 875	Dec. 11	1849	Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park Expansion Act of 1989.	$1.00
101-215	H.R. 3696	Dec. 11	1852	To provide survival assistance to victims of civil strife in Central America.	$1.00
101-216	H.R. 1495	Dec. 11	1853	Arms Control and Disarmament Amendments Act of 1989.	$1.00
101-217	H.R. 3620	Dec. 11	1857	To clarify the Food Security Act of 1985.	$1.00
101-218	S. 488	Dec. 11	1859	Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989.	$1.00
101-219	H.J. Res. 175	Dec. 12	1870	To authorize entry into force of the Compact of Free Association between the United States and the Government of Palau, and for other purposes.	$1.00
101-220	S. 1793	Dec. 12	1876	To make technical and correcting changes in agriculture programs.	$1.00
101-221	H.R. 3275	Dec. 12	1886	Steel Trade Liberalization Program Implementation Act.	$1.00
101-222	H.R. 91	Dec. 12	1892	Anti-Terrorism and Arms Export Amendments Act of 1989.	$1.00
101-223	H.R. 1502	Dec. 12	1901	District of Columbia Police Authorization and Expansion Act of 1989.	$1.00
101-224	H.R. 1668	Dec. 12	1905	National Oceanic and Atmospheric Administration Ocean and Coastal Programs Authorization Act of 1989.	$1.00
101-225	H.R. 2459	Dec. 12	1908	Coast Guard Authorization Act of 1989.	$1.00
101-226	H.R. 3614	Dec. 12	1928	Drug-Free Schools and Communities Act Amendments of 1989.	$1.00
101-227	H.R. 3629	Dec. 12	1943	Extending the authority of the Secretary of Commerce to conduct the quarterly financial report program under section 91 of title 13, United States Code, through September 30, 1993.	$1.00
101-228	H.J. Res. 449	Dec. 12	1945	Providing for the convening of the second session of the One Hundred First Congress.	$1.00
101-229	H.R. 1727	Dec. 13	1946	Everglades National Park Protection and Expansion Act of 1989.	$1.00
101-230	H.R. 2178	Dec. 13	1953	To designate lock and dam numbered 4 on the Arkansas River, Arkansas, as the "Emmett Sanders Lock and Dam".	$1.00
101-231	H.R. 3611	Dec. 13	1954	International Narcotics Control Act of 1989.	$1.00
101-232	H.R. 3670	Dec. 13	1967	To authorize the expansion of the membership of the Superior Court of the District of Columbia from 50 associate judges to 58 associate judges.	$1.00
101-233	S. 804	Dec. 13	1968	North American Wetlands Conservation Act.	$1.00
101-234	H.R. 3607	Dec. 13	1979	Medicare Catastrophic Coverage Repeal Act of 1989.	$1.00
101-235	H.R. 1	Dec. 15	1987	Department of Housing and Urban Development Reform Act of 1989.	$2.25
101-236	H.R. 3671	Dec. 15	2060	To amend the Federal Aviation Act of 1958 to extend the civil penalty assessment demonstration program.	$1.00
101-237	H.R. 901	Dec. 18	2062	Veterans' Benefits Amendments of 1989.	$1.25
101-238	H.R. 3259	Dec. 18	2099	Immigration Nursing Relief Act of 1989.	$1.00
101-239	H.R. 3299	Dec. 19	2106	Omnibus Budget Reconciliation Act of 1989.	$11.00
101-240	H.R. 2494	Dec. 19	2492	International Development and Finance Act of 1989.	$1.25

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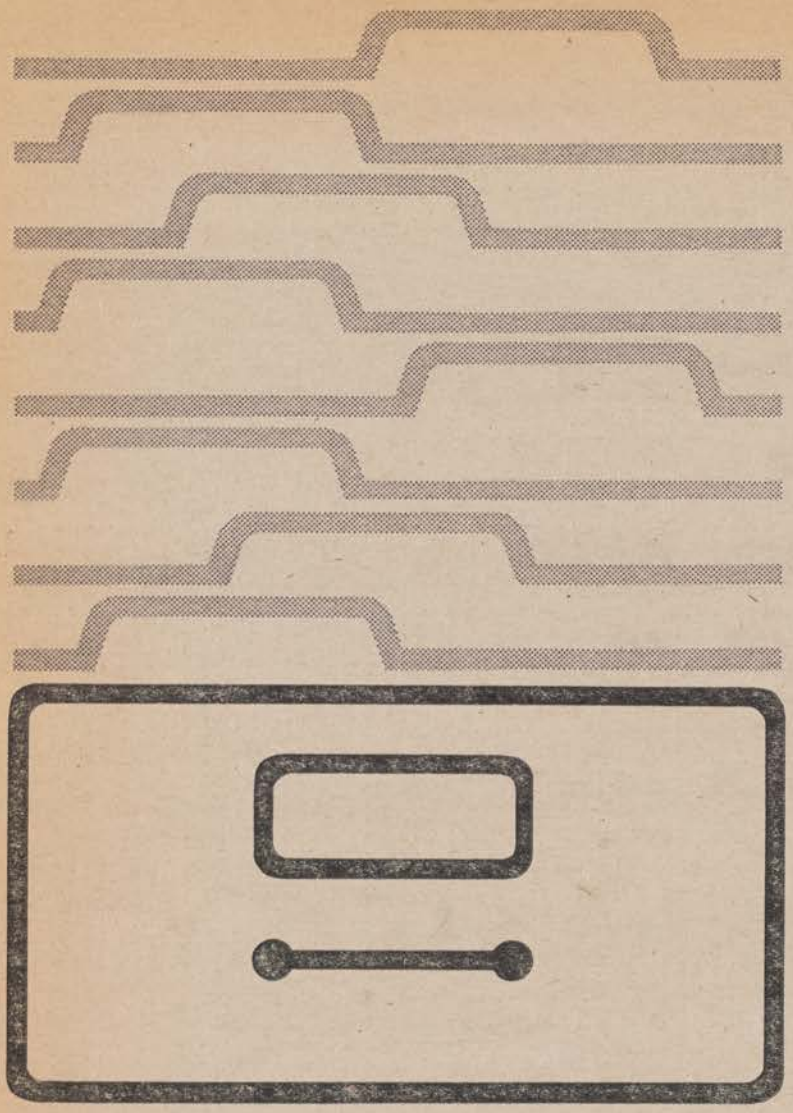

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in the Code of Federal Regulations (CFR)

Revised January 1, 1989

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