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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-AWP-3]

Proposed Revision of the Honolulu, HI, Control Zone and Establishment of the NAS Barbers Point, HI, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Honolulu, HI, Control Zone by dividing the control zone between NAS Barbers Point, HI, and Honolulu International Airport. This action will result in separate control zones at Honolulu International Airport and NAS Barbers Point, HI. The effect of this action is to gain an operational benefit by dividing the airspace, which will result in improved service to system users.

EFFECTIVE DATE: 0901, u.t.c., October 18, 1990.

FOR FURTHER INFORMATION CONTACT: Cherlynn Miller, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0010.

SUPPLEMENTARY INFORMATION:

History

On May 23, 1990, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Honolulu, HI, Control Zone by dividing the control zone between NAS Barbers Point, HI, and Honolulu International Airport (55 FR 21203). An error appeared in the publication of the Notice of Proposed Rulemaking for this action that transmitted incorrect geographical coordinates for the NAS Barbers Point, HI, Control Zone. The correct coordinates appear in the final rule. This correction is negligible and does not change the intent of the rule. 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. Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 2, 1990.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Honolulu, HI, Control Zone by dividing the control zone between NAS Barbers Point, HI, and Honolulu International Airport. This section will result in separate control zones at Honolulu International Airport and NAS Barbers, Point, HI. The effect of this action is to gain an operational benefit by dividing the airspace, which result in improved service to system users.

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.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

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

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Honolulu, HI [Revised]

Within a 5-mile radius of Honolulu International Airport (lat. 21°19'19"N., long. 157°55'31"W.), beginning at lat. 21°20'21"N., long. 158°00'02"W., clockwise to lat. 21°17'22"N., long. 157°59'41"W., then direct to point of beginning.

NAS Barbers Point, HI [New]

Within a 5-mile radius of NAS Barbers Point (21°18'24"N., long. 158°04'12"W.) beginning at lat. 21°17'22"N., long 157°59'41"W., clockwise to lat. 21°14'03"N., long. 158°04'21"W., then direct to lat. 21°10'54"N., long. 158°10'39"W., direct to lat. 21°16'41"N., long. 158°13'56"W., direct to lat. 21°18'37"N., long. 158°10'03"W., direct to lat. 21°19'00"N., long. 158°11'17"W., direct to lat. 21°22'18"N., long. 158°10'04"W., direct to lat. 21°21'29"N., long. 158°07'30"W., then clockwise via the 5-mile radius zone of NAS Barbers Point to lat. 21°20'21"N., long. 158°00'02"W., then direct to the point of beginning.

Issued in Los Angeles, California, on July 20, 1990.

Jacqueline L. Smith,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 18393 Filed 8-6-90; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-04]

Alteration of Transition Area; Marion, VA; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action updates the geographic coordinates of a final rule that was published in the **Federal Register** revising the Marion, VA, 700 foot Transition Area on June 26, 1990 (55

FR 25970), Airspace Docket No. 90–AER–04.

EFFECTIVE DATE: 0901 u.t.c. August 23, 1990.

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

SUPPLEMENTARY INFORMATION:

History

Airspace Docket No. 90–AEA–04, published on Tuesday, June 26, 1990 (55 FR 25970), revised the 700 foot Transition Area at Marion, VA. The geographic coordinates of the Mount Empire Airport, Marion/Wytheville, VA, have been updated since the issuance of the final rule notice. This action corrects the final rule.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 90–AEA–04, as published in the **Federal Register** on June 26, 1990 (55 FR 25970), is corrected to read as follows:

§ 71.181 [Corrected]

1. Under "Marion, VA [Revised]", page 25970, column 3, the legal description should read as follows:

Marion, VA [Corrected]

By removing "(lat. 36°53'41"N., long. 81°21'00"W.)" and substituting "lat. 36°53'40"N., long. 81°21'03"W.)"

Issued in Jamaica, New York, on July 19, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90–18394 Filed 8–6–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Parts 20 and 50

[Order No. 1438–90]

Dissemination and Exchange of Federal Bureau of Investigation Identification Records; Policy Change

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule changes FBI Identification Division policy in effect since July 1, 1974, relating to the exchange of identification records with federally chartered or insured banking institutions and officials of state and local governments for purposes of employment and licensing. In addition, the rule reflects the amendment to 7 U.S.C. 21(b)(4)(E) as provided for in Public Law 97–444 which permits registered futures associations access to all data on identification records, the amendment to the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq., as provided for in Public Law 99–399 which permits nuclear power plants to obtain all data on identification records, and the amendment to the Securities Exchange Act of 1934, 15 U.S.C. 78q(f)(2), as provided for in Public Law 100–181 which permits members of a national securities exchange and certain others to access all data on identification records. The policy restricting the dissemination of arrest data more than one year old with no disposition was originally placed in effect to reduce possible denials of employment opportunities or licensing privileges. Frequently, this restriction prevented agencies legally authorized access to the Criminal File of the Identification Division from receiving relevant arrest information concerning the potential employee or licensee. For example, an arrest for rape or child abuse which is over one year old and not accompanied by a disposition could not be provided to a state agency authorized by law to determine an individual's suitability for employment in a child-care center. Also, the one-year rule made it impossible to determine with finality that the applicant had no criminal record even though approximately 90 percent of the replies relate to individuals with no criminal records. All negative responses received the same reply: "No Record or No Record Meeting FBI Dissemination Criteria." Therefore, the Identification Division user never knew whether the applicant had no criminal record or whether he/she had a record that could not be disseminated because of the one-year rule

The new rule makes it possible for the FBI to disseminate all data on identification records, answer with finality the question of whether an individual has a criminal record, provide for the public safety, and yet protect the privacy interests of the individual with the record by giving him/her the opportunity to complete and/or challenge the accuracy of the information contained in the identification record prior to a final determination being made that the individual is not suitable for a license or employment based on the challenged or incomplete information in his/her FBI identification record.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Melvin D. Mercer, Jr., Chief of the Correspondence and Special Services Section, Identification Division, FBI, Washington, DC 20537–9700, telephone number (202) 324–5454.

SUPPLEMENTARY INFORMATION:

Background

In the September 10, 1987, **Federal Register** (52 FR 34242, 34243), the FBI Identification Division proposed to change the policy as provided in 28 CFR 20.33(a)(3); the commentary to that section appearing in the Appendix immediately following part 20; and 28 CFR 50.12. That policy affected the exchange of identification records with federally chartered or insured banking institutions, officials of state and local governments for purposes of employment and licensing, certain segments of the securities industry, the commodities industry, and nuclear power plants. (Congress has since enacted legislation exempting the segments of the securities industry.) Interested parties were given until November 9, 1987, to submit comments on the proposal. The FBI considered all comments except those dated and received after November 9, 1987, prior to making its final recommendation.

Comments Concerning the Proposed Rule Change

The FBI received 28 letters from individual banks or banking associations representing numerous banks. These banks or banking associations were located in 21 states and the District of Columbia. All offered

support for the proposed rule change. The American Bankers Association also commented that arrest information over one year old absent a disposition could be useful to banks in making employment decisions, but suggested that arrest information over 10 years old may not be as relevant and could be withheld.

The FBI also received 15 letters from state entities in some way responsible for administering the noncriminal justice use of criminal history record information for licensing and employment purposes. All but two of the letters supported or had no problem with the proposed rule change. One of these two letters recognized the meritorious arguments supporting the proposal, but advised that by state law, certain authorized noncriminal justice governmental users were permitted access only to conviction data. Therefore, it was argued that the change in policy would result in some authorized licensing or employing entities obtaining more data than permitted by state law. The second state raised a similar objection to the proposed rule. However, it is noted that the current one-year rule policy may also be contrary to these state laws since nonconviction data is presently being disseminated by the FBI to those same authorized state agencies. This concern can be eliminated by requiring that the FBI deal only with the state criminal justice entity controlling state access to criminal history record information. By returning the criminal history record to such an entity, that entity can apply state law so that, where appropriate, only conviction data is released to the noncriminal justice governmental licensing or employment entity. If the central entity receives an arrest lacking a disposition and obtains the disposition showing a conviction, it can release the information. If the state entity decides not to ascertain the disposition for a particular arrest, it can delete that arrest and any other arrest showing an acquittal, dismissal, etc., as well as other data deemed irrelevant by law to the job/license sought.

The FBI also received favorable comments from four organizations which currently receive the entire record. In general, these organizations discussed the usefulness of arrest information in making licensing/employment determinations. Their responsible handling of this information was also discussed.

The FBI received several other letters supporting the proposed rule change. A group representing the securities industry, which did not receive the entire record at the time the letter was written, advised that it supported the rule change and was at a disadvantage in not having access to arrest information over one year old that lacked a disposition. The FBI also received letters of support from a local prosecutor's office, from an organization representing the industrial security interests of numerous large corporations and businesses, and from an individual representing the interests of a law enforcement organization, as well as a bank. Finally, an organization representing news reporters and editors wrote arguing in favor of public access to these records, an even broader release of criminal history records.

In addition to the letters of opposition to the change from two state agencies which were addressed previously, the FBI received 11 other letters or comments opposing the change. Included in this number was the testimony in opposition to the rule change which was given during two days of hearings before the U.S. House of Representatives Subcommittee on Civil and Constitutional Rights, Judiciary Committee. (Statements submitted to the Subcommittee which were in support of the rule change were considered with the other positive remarks.) Two of the comment letters opposing the change were from representatives of different educational institutions, and one was from an individual who was identified as a training officer in a state agency but who did not correspond on letterhead stationery. Seven of the opposing comments were received from organizations representing minorities or individuals with arrest records. Finally, a letter of opposition was received from the U.S. House of Representatives Subcommittee on Civil and Constitutional Rights, Judiciary Committee.

In some cases, the negative comments reflect a misunderstanding of the current statutory authority enabling the FBI to exchange information with noncriminal justice licensing or employment entities. Some of the opponents to the rule change also voiced opinions that the regulations should be changed to place additional restrictions on access to information. Set forth below are the major concerns of the opponents and the FBI's brief comments relating to the consideration given these concerns:

(1) Arrest information over one year old, absent a disposition, as well as nonconviction data, is of little relevance to a determination of licensing and/or employment suitability. FBI comment: To the contrary, those authorized by law to access this information believe such information is beneficial. For example, they will not be able to determine if an open arrest entry, considered relevant to a job/license determination, resulted in a conviction which would reflect on the qualifications/suitability of the applicant. In licensing or employment situations involving the care/supervision/contact with children, nonconviction data or open arrest information relating to child molestation or child abuse has been argued to be relevant. The employing/licensing authority investigating the circumstances surrounding the arrest will not be able to determine all the facts relating to the incident, whereas previously it may have never learned of that incident. The FBI is not the appropriate party to determine what is relevant and what information on the record can be used in suitability determination situations. As set forth in the Senate Subcommittee report issued in connection with amendments to the Securities Exchange Act of 1934, this is "precisely the kind of information" the securities industry needs "to identify potentially untrustworthy personnel and make informed hiring decisions * * *"

(2) The burden should be on the FBI to obtain the disposition for arrests so the information can be released. FBI comment: The FBI takes its responsibilities for maintaining the central criminal history record repository seriously and makes every effort to ensure the information in the system is accurate and complete. However, knowing the criminal history records were incomplete, the United States Congress and various state legislatures still authorized access to the records without limitations. If an arrest is relevant and there is no disposition noted at the Federal level, the authorized licensing or employment entity receiving the information should then be able to make such use of it as is permitted by law or regulation.

(3) The rule change will have an adverse effect on the employment opportunities of blacks and other minorities who have a higher incident of arrests which do not lead to formal charges and/or are subsequently dismissed. FBI comment: This statement seems to reflect the concern that a minority applicant, because of disproportionately higher incidents of arrests, will be more often wrongfully denied a job or license for one of two reasons:

(a) That the user of the criminal history record information will intentionally use the arrest information to justify a denial of a license or

employment when the denial is actually based on discrimination. FBI comment: If raw arrest information or even an arrest with a dismissal or acquittal is used to mask discriminatory action resulting in a denial of a license or employment, such action would be abhored and a violation of law. It is perhaps due in part to this concern that Congress has limited access to criminal history record information to only certain noncriminal justice entities for licensing and employment purposes. However, based on the information available, it appears that those authorized such access to the information are using the records in a responsible manner.

(b) That the user of the criminal history record will draw an adverse inference of guilt due to the existence of an arrest lacking a disposition and, as a result and without any malicious or discriminatory intent, will deny a license or employment to minority applicants in a disproportionately high number. FBI comment: The FBI's experience is that noncriminal justice users of the record are familiar with the make-up of a criminal history record and the meaning and weight to be given to arrest entries and other information on the record. However, to help eliminate any confusion and to reinforce the fact that the arrest entry should not be treated as an indicator of guilt, the caveat on all criminal history records provided by the FBI to officials making noncriminal justice licensing or employment suitability determinations will now be expanded. The caveat will reflect that when a criminal record contains an arrest without a disposition, the official should assume that the subject of the arrest was found not guilty, absent information to the contrary.

During the Congressional hearings on the rule, some witnesses voiced the opinion that modification of the rule would disproportionately impact minorities. Because no evidence was presented to support this view, the FBI attempted to determine the number of individuals who could be adversely affected. To begin with, records indicate that 93% of applicant fingerprint cards received for licensing and employment purposes are not identified with a criminal record and 7% are identified with a criminal record. Therefore, it was projected that 70,000 of the 1,000,000 requests expected in Fiscal Year 1989 would be subject to the rule. Only a small portion of these FBI arrest records would involve minorities with arrests lacking disposition information. This figure was projected to be only about 9,625 individuals (less than 1%) when 1,000,000 applicants are considered. There is no indication that these figures represent a disproportionate impact on minority applicants. Moreover, as explained below, those individuals affected by the final rule will be afforded certain safeguards. Finally, the final rule will result in a benefit to those individuals who have no record whatsoever, as the FBI would be able to respond by stating "No record" as opposed to the current standard reply of "No Record or No Record Meeting FBI Dissemination Criteria."

In addition to examining the issues described above, the FBI has considered several other factors in deciding to adopt this final rule. The current rule prevents federally chartered or insured banking institutions and officials of state and local governments authorized by state statute pursuant to Public Law 92–544 from receiving relevant arrest data more than a year old with no disposition. Furthermore, many of the state and local government agencies are receiving less criminal history information than they are permitted to have by their state statutes. For registered futures associations (Pub. L. 97–444), nuclear power plants (Pub. L. 99–399), and the securities industry (Pub. L. 100–181), Congress overcame the restrictions of the current rule by authorizing them to receive all arrest information for purposes of licensing and employment. This final rule will permit the authorized entities under Pub. L. 92–544, as well as any future authorized entities, to receive the same unrestricted arrest data.

Based on the FBI's past experience, and as indicated in some of the written comments supporting this rule change, the entities receiving FBI criminal history record information handle the information in a responsible manner. Language incorporated in this final rule for the first time provides that officials making licensing or employment suitability determinations based on an FBI identification record furnished pursuant to Pub. L. 92–544 must advise the applicant why he/she is being fingerprinted, and must provide the applicant an opportunity to complete, or challenge the accuracy of, any information in the record if such information is the basis for denial of a license or employment. The officials cannot deny the license or employment based on the challenged information in the record until the applicant has been afforded a reasonable time to correct or complete the information in the record, or has declined to do so. The caveat incorporating these use-and-challenge requirements will be placed on all records disseminated pursuant to Public Law 92–544. In addition, to ensure that the user of the record does not give inappropriate weight to an arrest entry without a disposition, this caveat will advise that, absent additional information, the user should assume that the individual was found not guilty of the crime for which he/she was arrested when the criminal history record does not contain a disposition for the arrest.

The final rule strikes a more even balance than the current rule. This final rule provides for further protection of the public by releasing all criminal history information to authorized entities for licensing and employment purposes. However, it also protects the privacy interests of the individual with the record by making him/her aware of the use-and-challenge requirements. State and Federal laws relating to equal employment opportunities are also available to the applicants for resolving disputes.

The FBI believes a side benefit resulting from the adoption of this final rule will be a more accurate and complete criminal history record system.

The only substantive difference between the proposed rule and the final rule is the addition of nuclear power plants to the list of entities with which the FBI is authorized to exchange identification records. The change reflects the amendment to the Atomic Energy Act which permits nuclear power plants to obtain all data on identification records. Public Law 99–399. After considering all comments, the Department has determined that the final rule should be promulgated as set forth below.

This is not a major rule within the meaning of Executive Order (E.O.) 12291, and it will not have a substantial impact on a significant number of small businesses.

This rule change necessitates changes to Section 20.33(a)(3); the commentary to that Section appearing in the Appendix at the end of Part 20; and Section 50.12 of Title 28 of the CFR inasmuch as the one-year-restriction rule is referred to in those sections and the commentary.

List of Subjects

28 CFR Part 20

Administrative practice and procedure, Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

28 CFR Part 50

Administrative practice and procedure.

By virtue of the authority vested in me as Attorney General under 28 U.S.C. 534, 15 U.S.C. 78q, 7 U.S.C. 21(b)(4)(E), 42 U.S.C. 2169, and Pub. L. 92–544 (86 Stat. 1115), Part 20 and part 50 of title 28 of the CFR are amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 is revised to read as follows:

Authority: Pub. L. 93–83; 42 U.S.C. 3701, et seq.; 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196.

2. In § 20.33, paragraph (a)(3) is revised to read as follows:

§ 20.33 Dissemination of criminal history record information.

(a) * * *

(3) Pursuant to Public Law 92–544 (86 Stat. 1115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States. Refer to § 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph.

* * * * *

3. In part 20, the Appendix—Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems is amended by revising the commentary for § 20.33 to read as follows:

Appendix—Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems

* * * * *

Section 20.33. Incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the Federal Government for noncriminal justice purposes.

* * * * *

PART 50—[AMENDED]

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

Authority: 28 U.S.C. 508, 509, 510, 516, 517, 518, 519; 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d), E.O. 11247; 3 CFR (1964–65 Comp.) 348, 21 U.S.C. 881(f)(2).

5. Section 50.12 is revised to read as follows:

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions and with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92–544 (86 Stat. 1115). Also, pursuant to 15 U.S.C. 78q, 7 U.S.C. 21(b)(4)(E), and 42 U.S.C. 2169 respectively, such records can be exchanged with certain segments of the securities industry, with registered futures associations, and with nuclear power plants.

(b) The Director of the FBI is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records with federally chartered or insured banking institutions, officials of state and local governments for purposes of employment and licensing, certain segments of the securities industry, registered futures associations, and nuclear power plants. Under this authority, effective September 6, 1990, the FBI Identification Division will make all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. Those officials making such determinations must advise the applicants that procedures for obtaining a change, correcting, or updating of an FBI identification record are set forth in 28 CFR 16.34. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

(c) There will be no change in FBI Identification Division procedures for dissemination of all criminal record information for criminal justice purposes and to agencies of the Federal Government as currently authorized by 28 U.S.C. 534.

Dated: *July 26, 1990.*

Dick Thornburgh;

Attorney General.

[FR Doc. 90–18038 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: To enhance enforcement of the economic sanctions imposed against Cuba, this rule revises the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulation"), by requiring that all U.S. flights to and from Cuba arrive and depart during general U.S. Customs Service business hours, typically 8:30 a.m. to 5 p.m.

EFFECTIVE DATE: October 9, 1990.

FOR FURTHER INFORMATION: William B. Hoffman, Chief Counsel (telephone: 202/535–6020), or Steven I. Pinter, Chief of Licensing (telephone: 202/535–9449), Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This rule affects all U.S. common carriers engaged in airline flights between the United States and Cuba, and persons holding travel service provider and carrier service provider licenses or provisional authorization issued pursuant to § 515.560(i) of the Regulations to arrange transportation between the United States and Cuba. These common carriers and service providers are required to insure that flights arranged by them arrive and depart from the United States during general U.S. Customs Service business hours at Miami International Airport, the only port of entry or exit in the United States for flights from or to Cuba currently authorized under the regulations of the U.S. Customs Service. General business hours are between 8:30 a.m. and 5 p.m. unless otherwise posted.

In order to assure proper and effective enforcement of the economic sanctions imposed against Cuba, systematic passenger clearance and baggage inspection on flights going to and coming from Cuba are being instituted. Such procedures are necessary to prevent illegal importations and exportations from occurring, and to insure that excessive amounts of U.S. currency are not taken to Cuba for transactions that are restricted by the Regulations. By requiring all flights to depart and arrive during the regular hours of business for the U.S. Customs Service, sufficient resources will be available to conduct regular inspections of these flights.

In the event of an emergency determined to require arrival or departure at a time outside general business hours, the Office of Foreign Assets Control will issue an emergency license pursuant to § 515.801 of the Regulations.

This rule was published as a proposed rule on October 24, 1989, and public comment was solicited. Comments of those opposing the proposed rule emphasized the likely increased cost to the traveler if flights were compelled to leave and arrive during normal business hours. Those favoring the change emphasized the need for greater inspection to enforce the current economic embargo of Cuba. Following review of all comments submitted, it was determined that the foreign policy interests to be served by improved clearance and inspection procedures outweigh any inconvenience or additional expense which may result from implementation of the rule.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required under the Administrative Procedure Act or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are also inapplicable.

List of Subjects in 31 CFR Part 515

Cuba, travel.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as follows:

PART 515—THE CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943–1946 Comp. p. 748.

2. Section 515.560(l) is added to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba.

* * * * *

(l) Except as authorized by the Director, Office of Foreign Assets Control, any travel service provider or carrier service provider arranging transportation between Cuba and the United States must insure that arrival and departure at the port of entry or exit in the United States occur during the general business hours of the U.S. Customs Service (as defined in 19 CFR 101.6) at the relevant port of entry or exit.

Dated: July 18, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 23, 1990.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 90–18410 Filed 8–2–90; 11:36 am]

BILLING CODE 4810-25-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 842

Administrative Claims

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is revising its regulation which governs the processing of administrative claims for personal injury and property damage both on behalf of and against the government. A recent statutory change, requests from the Department of Justice, and correction and clarification of specific sections make it necessary to revise this regulation. The purpose of this notice is to inform the public of these revisions.

EFFECTIVE DATE: September 6, 1990.

FOR FURTHER INFORMATION CONTACT: Major F. Adams, Claims and Tort Litigation Staff, Office of the Judge Advocate General, Department of the Air Force, Washington, DC 20332–6128, telephone, (202) 767–1575.

SUPPLEMENTARY INFORMATION: Because this part implements a higher level directive, it is not published as a proposed rule for public comment. It is published as a final rule for information purposes.

Sections 842.49 and 842.109 are revised to correct the previous language for which there were no specific statutory authority. Section 842.57 is revised to correct an omission and to facilitate settlement of claims in the field. Section 842.95 is revised to clarify the language. These sections were revised as a result of Air Force review and reevaluation. Section 842.84 implements a recent statutory change (Pub. L. 101–189, 29 Nov 89). Section 842.89 is revised based upon a request by the Department of Justice.

The Department of the Air Force has determined this regulation is not a major rule as defined by Executive Order 12291; is not subject to the relevant provisions of the Regulatory Flexibility Act (5 U.S.C. 601–611); and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 32 CFR Part 842

Claims, Law, Foreign claims, Tort claims, Government property.

For the reasons set out in the preamble, 32 CFR part 842 is amended as set forth below.

PART 842—ADMINISTRATIVE CLAIMS

1. The authority citation for part 842 continues to read as follows:

Authority: Sec. 8013, 100 Stat. 1053, as amended; 10 U.S.C. 8013, except as otherwise noted.

2. Section 842.49 is amended to revise paragraph (f) to read as follows:

§ 842.49 Claims payable.

* * * * *

(f) Claims filed by DOD military or civilian health care providers or legal personnel for their personal liability by settlement or judgment, to include reasonable costs of such litigation, for their common law tortious acts committed within the scope of their employment under circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

3. In § 842.57 paragraph (a)(4) is amended to add the words "and Canada" as part of the parenthetical note "(for Greenland)", to read "(for Greenland and Canada)"; paragraph (c) is removed and paragraph (b) is revised as set out below; and paragraphs (d) and (e) are redesignated as (c) and (d).

§ 842.57 Delegations of authority.

* * * * *

(b) *Authority to appoint FCCs.* (1) The Chief, Claims and Tort Litigation Staff, has the delegated authority to appoint a judge advocate or civilian attorney as a FCC and to redelegate all or a part of his or her settlement authority to that FCC.

(2) A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs, and may redelegate all or part of that settlement authority to those FCCs, in writing. Every FCC must have authority to settle claims for at least $10,000.

* * * * *

§ 842.84 [Amended]

4. In § 842.84 paragraphs (a)(2) and (b)(3) are amended to remove the entry "$10,000" and to add in its place "$100,000." Paragraphs (a)(2)(iv) and (b)(3)(iv) are amended to remove the words "and Branch Chiefs," and remove the comma and add the word "and" between "The Chief," and "Deputy Chief."

5. Section 842.89 is amended to revise paragraph (a) and (d) to read as follows.

§ 842.89 Statute of limitations.

* * * * *

(a) Federal, not state law, determines the time of accrual. A claim normally accrues at the time of injury when essential operative facts are apparent. However, in other instances, especially in complex medical malpractice cases, a claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

* * * * *

(d) Properly asserted third party actions, as permitted under the Federal Rules of Civil Procedure, may be brought against the United States without first filing a claim. In such instances those actions may start more than 2 years after the claim has accrued.

6. Section 842.95 is amended to revise paragraph (b) to read as follows.

§ 842.95 Non-assertable claims.

* * * * *

(b) Loss or damage to government property:

(1) Caused by a nonappropriated fund employee acting in the scope of employment.

(2) For which a person has accountability and responsibility under the Report of Survey system.

* * * * *

7. Section 842.109 is amended to revise paragraph (d) to read as follows:

§ 842.109 Claims payable.

* * * * *

(d) Claims filed by ANG military or civilian health care providers or legal personnel for their personal liability by settlement or judgement, to include reasonable costs of such litigation, for their common law tortious acts committed on or after 29 Dec 1981 while performing title 32 duty within the scope of their employment under the circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-18412 Filed 8-6-90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[Regulation 90-10]

COTP Huntington, WV; Safety Zone Regulation: Ohio River Mile 184.0 to 185.0

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone between mile 184.0 and 185.0 Ohio River. The zone is needed to protect waterborne traffic from a potential hazard associated with a fireworks display located at mile 184.5 Ohio River. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective at 2130 (local time) 18 August 1990. It terminates 2230 (local time) 18 August 1990, unless terminated sooner by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CWO Pierce, Huntington, WV (304) 529-5524.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential injury to waterborne personnel.

Drafting Information

The drafter of this regulation is CWO Pierce, project officer for the Captain of the Port.

Discussion of Regulation

The incident requiring this regulation results from a potential hazard associated with a fireworks display located at mile 184.5 Ohio River. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of 33 CFR part 165.

List of Subjects in 33 CFR Part 165

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

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulation, is amended as follows:

PART 165—[AMENDED]

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

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

2. A new section 165.T0279 is added to read as follows:

§ 165.T0279 Safety Zone Ohio River.

(a) *Location.* The following area is a safety zone: Mile 184.0 to 185.0 Ohio River.

(b) *Effective date.* This regulation becomes effective on 18 August 1990 at 2130. It terminates on 18 August 1990 at 2230, unless terminated sooner by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: 20 July 1990.
Time: 1300.

R.P. Prince,

LCDR, U.S. Coast Guard, Alternate Captain of the Port, Huntington, West Virginia.

[FR Doc. 90-18390 Filed 8-6-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3818-2]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation.

SUMMARY: On April 30, 1990, the Metropolitan Government of Nashville-Davidson County, Tennessee, requested delegation of authority for the

implementation and enforcement of two new standards in 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP)). In a letter dated June 18, 1990, EPA delegated the new standards to the Nashville-Davidson County, Metropolitan Health Department.

DATES: The effective date of delegation is June 18, 1990.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation may be examined during normal business hours at the Agency's regional office, 345 Courtland St., NE., Atlanta, Georgia 30365. All reports required pursuant to the newly delegated standards (identified below) should be submitted to the Metropolitan Health Department, Air Pollution Control Division, 311–23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Carla E. Pierce of the EPA Region IV Air Programs Branch at the above address and telephone number 404–347–2864 or FTS–257–2864.

SUPPLEMENTARY INFORMATION: Section 112(d)(1) of the Clean Air Act (CAA) authorizes EPA to delegate to the states the authority to implement and enforce the standards set out in 40 CFR part 61, NESHAP.

On Aril 30, 1990, the Metropolitan Health Department of Nashville/Davidson County requested the delegation of two NESHAP categories. The following NESHAPS were requested:

40 CFR Part 61 Subpart

BB—Benzene Emissions (Benzene Transfer Operations)
FF—Benzene Emissions (Benzene Waste Operations)

After thorough review of the request, the Regional Administrator determined that such delegation was appropriate with all the conditions set forth in the initial delegation letters of February 20, 1986, and May 25, 1977. EPA, thereby, delegated its authority for 40 CFR part 61, subparts BB and FF (excluding § 61.353) on June 18, 1990. Subpart FF contains a delegation restriction under § 61.353 for alternative means of emission limitation.

I certify, pursuant to 5 U.S.C. 605(b), that this delegation will not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirement of section 4 of Executive Order 12291.

Authority: Section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

Dated: July 23, 1990.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90–18451 Filed 8–6–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPD–480–F]

RIN 0938–AD63

Medicare Program; Uniform Relative Value Guide for Anesthesia Services Furnished by Physicians

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are establishing a relative value guide for use in all carrier localities in making payment for anesthesia services furnished by physicians under Medicare Part B. This final rule implements section 4048(b) of the Omnibus Budget Reconciliation Act of 1987. The relative value guide is designed to ensure that payments using the guide do not exceed the amount that would have been paid absent the guide.

This final rule also implements section 6106 of the Omnibus Budget Reconciliation Act of 1989. Section 6106 revises the method under which time units are determined for anesthesia services furnished by anesthesiologists or certified nurse anesthetists on or after April 1, 1990.

DATES: This final rule is effective September 6, 1990.

FOR FURTHER INFORMATION CONTACT: James Menas, (301) 966–4507.

SUPPLEMENTARY INFORMATION:

I. Background

Prior to the implementation date of this final rule and in accordance with our regulations (42 CFR 405.552 and 405.553), anesthesiology services personally furnished by a physician were paid on a reasonable charge basis under Part B of the Medicare program (Supplementary Medical Insurance). In addition, payment on a reasonable charge basis under Medicare Part B could be made for the physician's personal medical direction that he or she provided to qualified individuals furnishing anesthesia services (for example, a certified registered nurse anesthetist (CRNA)).

Medicare carriers processing anesthesia claims calculated the reasonable charge for anesthesia services based on the following:

- Base value units assigned to the specific procedure performed that represent the value of all anesthesia services except the value of the actual time spent administering the anesthesia.
- Time units that represent the elapsed period of time from when the anesthesiologist prepares the patient for induction and ending when the anesthesiologist is no longer in personal attendance to the patient. The carrier allowed no more than one time unit for each 15-minute or 30-minute interval.
- The carrier could also use modifier units that take into account special factors such as the age or physical condition of the patient. About 65 percent of the carriers recognized modifier units.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4048(b) of Public Law 100–203 requires the Secretary, in consultation with groups representing physicians who furnish anesthesia services, to establish a relative value guide for use in all carrier localities in making payment under Medicare Part B for physician anesthesia services furnished on or after January 1, 1989. The guide must be designed to result in payments that do not exceed the amount of the expenditures that would have occurred absent this provision of the law. On January 26, 1989 (54 FR 3794), we published a proposed rule to implement the provisions of section 4048(b) of Public Law 100–203.

II. Provisions of the Proposed Rule

A. Relative Value Guide and Coding Issues

In processing anesthesia claims, carriers previously had the authority to choose the relative value guide they used for assigning base units to anesthesia services. The principal relative value guides included various versions of the American Society of Anesthesiologists' (ASA) Relative Value Guide, particularly the 1967, 1970, and 1973 versions of that guide; the 1964 or the 1969 California Relative Value Scale; various State guides; and charge-based relative value guides. These guides assign anesthesia relative value base units to surgical procedures. Because of this, our carriers have required physicians to report the anesthesia service using the surgical procedure codes from the Physicians Current Procedural Terminology, Fourth Edition, commonly referred to as CPT–4.

The CPT–4 also includes an anesthesiology coding system developed by ASA that categorizes anesthesia procedures by body part. There are 17 broad categories ranging from anesthesia procedures on the head to anesthesia procedures associated with miscellaneous procedures. These categories are composed of approximately 250 codes. This compares with up to 4200 surgical procedure codes under which carriers previously classified anesthesia services.

ASA has also developed a relative value guide to complement the CPT–4 anesthesia codes that assigns a specific number of base units to each of the anesthesia codes. ASA's relative value guide also provides for the use of modifier units for physical status and additional units for qualifying circumstances.

We proposed that the 1988 ASA Relative Value Guide be used as the uniform guide for making payment under Medicare Part B for anesthesia services furnished by physicians. One of our primary considerations in making this proposal is the fact that the 1988 ASA Relative Value Guide is linked to the CPT–4 anesthesia codes. All other relative value guides are linked to the surgical procedures. Also, the number of procedure codes under this system is significantly less than under the previous system. In addition, the 1988 ASA Relative Value Guide is designed to lend itself to determining relative value units for new procedures. Because the ASA guide is more oriented to grouping surgical procedures by body systems rather than oriented to the specific surgical procedure furnished, a relative value ordinarily can be assigned to a new procedure based on the existing relative value unit for the code in the body system category that is most comparable to the new procedure.

However, we also proposed to reduce the number of base units assigned to all lens surgery to four units. Under the ASA guide, lens surgery has a unit value of six. On October 7, 1986, we published a final notice in which we uniformly reduced the number of base units for cataract surgery from eight units to four units (51 FR 35693). We proposed to continue this policy. Also, in that final notice, we had reduced the number of base units for iridectomy anesthesia to four units. Under ASA's system, iridectomy anesthesia would be reported under "Anesthesia for procedures on eye; not otherwise specified." This category of services is currently assigned a base unit of five units. We proposed to require carriers to continue to recognize four base units for iridectomy anesthesia and establish a specific code for iridectomy anesthesia.

We proposed to allow carriers that previously recognized additional payments beyond the anesthesia fee for specialized forms of monitoring, such as intra-arterial, central venous, and Swan-Ganz, to continue this practice. Carriers who did not previously recognize additional payment for specialized forms of monitoring would be required to maintain their previous practice. We were concerned, however, that the continuation of this practice would result in payment policies that are not uniform for services that represent an integral part of the anesthesia service for a surgical patient. Therefore, we requested comments on the option of *not* recognizing separate reasonable charge payments for specialized monitoring, but rather, including payment for specialized monitoring through the anesthesia conversion charge factor.

While we proposed the use of CPT–4 anesthesia codes, we considered requiring the continuation of CPT–4 surgical codes to report anesthesia services. We invited comment on the extent to which the CPT–4 anesthesia codes could be modified to prevent inappropriate coding or fragmentation of services and more readily permit the detection of noncovered services.

B. Modifier Units

Modifier units are units allowed in addition to the base units assigned to a procedure and are based on the patient's physical status (for example, one or more units may be added if the patient has a severe systemic disease). Additional units are allowed for qualifying circumstances, such as extreme age, unusual risk factors, or less than optimum operating conditions.

The use of modifier units appears to be subjective and difficult for carriers to validate in claims review operations without substantial cost and effort. ASA proposed to refine the circumstances under which modifier units are recognized and has drawn up revised guidelines that define more precisely the specific patient conditions that warrant modifier units. Nevertheless, we proposed that no modifier units or any other units for qualifying circumstances would be recognized under the uniform relative value guide. In the proposed rule, we stated that we believe that the elimination of modifier units would not have a substantial adverse effect on individual anesthesiologists for the following reasons:

- About 35 percent of the carriers do not recognize modifier units. Therefore, anesthesiologists in these carriers' areas would not experience any change.
- We estimated that the proportion of total anesthesia units associated with modifier units is relatively minor, less than 10 percent of total units.
- Anesthesiologists typically treat a mix of patients with different health conditions. It is unlikely that an anesthesiologist would treat only patients in poor physical health and, therefore, would be disadvantaged by the elimination of modifier units.

In addition, we believe that it would be difficult to preserve budget neutrality if we allowed the use of modifiers because each carrier would have had to estimate the number of modifier units it would have allowed if ASA's revised modifier unit policy had been used to process claims in 1988. Finally, we were concerned with the precedent that could be established with respect to other physician specialties and the use of modifiers with respect to Medicare cases.

C. Time Units

In the proposed rule, we stated that we were interested in receiving comments on whether the adoption of the CPT–4 anesthesia codes would lessen or enhance our ability to eliminate the use of time units. Although we presented a number of considerations that would support the elimination of time units, we proposed to retain the use of time units at this point.

We described the recommendations made by the Office of Inspector General (OIG) to change the way an anesthesia time unit is computed. The options were presented by OIG in a report entitled "Medicare Part B Payments for Unexpended Physician Efforts Relating to Anesthesia Services" (A–07–88–00082 issued on August 9, 1988). (Copies of this report can be obtained by writing to OIG at 330 Independence Ave. SW., Washington, DC 20201.) The options were as follows:

- Pay for actual time expended, rather than treating all fractional units as whole units. That is, 65 minutes would equal four and one-third time units instead of five units for a procedure personally performed by an anesthesiologist.
- Round all fractional units down to the next lower whole unit, that is, disregard all fractional time units. (For example, any amount of time between 61 and 74 minutes would equal four units instead of five units.)
- Pay only for those fractional units in excess of one-half as whole units. That is, any fraction equal to or less than one-half time unit (7.5 minutes) would be disregarded. (For example, 65 minutes

would equal four units, but 68 minutes would equal five units.)

We specifically requested comments on these alternatives.

In the preamble to the proposed rule, we stated our intention to initiate more aggressive monitoring of time reporting in the future and to eliminate the separate time unit element of the anesthesia payment system within 2 years of the effective date of this final rule. We indicated that the elimination of time units will be the subject of a separate notice of proposed rulemaking and that comments submitted in response to that proposed rule will be carefully considered before implementation of a revised time unit policy.

D. Program Expenditures Under the Uniform Relative Value Guide

Section 4048(b) of Public Law 100–203 provides that the uniform relative value guide is to be designed so as to result in Medicare payments for anesthesia services that do not exceed the amount that would have occurred absent the guide. In order to comply with this statutory requirement, we proposed that carriers adjust their customary and prevailing charges during the profile update process for 1989. Customary and prevailing charges would be computed as if the 1988 ASA Relative Value Guide, without modifiers, had been used to process claims for services furnished during the 12-month period ending June 30, 1988. This is the 12-month period that was used to update the customary and prevailing charges on January 1, 1989. For carriers unable to make this adjustment as part of the profile update process because, for example, time and modifier units are merged, we proposed that they make the adjustment based on a representative sample of anesthesia services.

The prevailing charge as limited by the Medicare economic index would be adjusted by the ratio of the unadjusted prevailing charge under the new system to the unadjusted prevailing charge under the old system.

Revised maximum allowable actual charges (MAACs) would be calculated by multiplying the previous year's MAAC by the ratio of the updated customary charge determined under the carrier's previous system to the updated customary charge determined under the uniform relative value guide. However, carriers that adjusted conversion factors based on a representative sample of anesthesia claims would use the sample results to calculate revised MACCs.

E. Delay in the Effective Date of the Uniform Relative Value Guide

We proposed to delay the implementation of the uniform relative value guide until March 1, 1989. Thus, for services furnished on or after January 1, 1989 and before March 1, 1989, anesthesia services would continue to be paid on the basis of CPT–4 surgical codes and under the carrier's relative value guide. The carriers would update customary and prevailing charge conversion factors on January 1, 1989 in the usual manner.

We proposed the delay to allow the carriers additional time to recalculate customary and prevailing charge conversion factors applicable under the uniform relative value guide. In addition, since HCPCS was updated in March 1989, the delay enabled carriers to implement the coding change and the conversion factors under the uniform relative value guide at the same time. We believe that the additional time provided for a more orderly transition.

R. Updating the Uniform Relative Value Guide

In the proposed rule, we discussed the process by which the relative value guide is to be reviewed and revised. The ASA advised us that they have made few annual revisions to their Relative Value Guide.

We would review the guide to determine if the following changes are needed:

- The addition or deletion of codes to reflect new or outmoded procedures.
- The adjustment of base units for procedures for which there are measurable technical or practice changes, such as increased proficiency.

In the proposed rule, we provided that we would allow carriers to assign base units to new procedures as they are developed. The nature of the CPT–4 anesthesia codes is such that when new procedures are developed, the coding system generally will assign the new procedure to the body part code with which it is most closely associated. We assume that most new procedures would follow this route. Conversely, if there is no existing code that appropriately describes a new procedure, the carriers would, through their medical consultants, establish a local code and relative value. We proposed to review the carriers' practices with these procedures every 3 years and establish uniform relative values.

With regard to the adjustment of base units for procedures for which there are measurable technological or practice changes, we proposed to announce these adjustments through publication in the **Federal Register** of proposed and final notices as specified in the regulations at § 405.502(h), which concern the establishment of special reasonable charge limits for physician services. Section 1842(b)(10)(A)(i) of the Act specifically provides that when "inherent reasonableness" is used to reduce the reasonable charge for a service, a special charge limit is imposed. This limits the amount a nonparticipating physician could charge a beneficiary. During the first 12 months it is in effect, the limit would be equivalent to the limiting charge plus one-half of the difference between the physician's actual charge and the limiting charge. The limiting charge is defined as 1.25 multiplied by the reasonable charge for the anesthesia service. After the first 12 months, the charge limit would be equivalent to the limiting charge.

We proposed to review every 3 years the carriers' practices with those procedures for which there are measurable technological or practice changes and to establish uniform relative base units.

III. Discussion of Comments

We received approximately 530 comments on the proposed rule to implement the uniform relative value guide for physician anesthesia services. The majority of the comments were from individual anesthesiologists. In addition, we received comments from professional organizations that represent anesthesiologists or anesthetists such as the American Society of Anesthesiologists, the Anesthesia Care Team Society, and the American Association of Nurse Anesthetists. We also received comments from the American Medical Association (AMA), several State anesthesia societies and medical societies, Blue Cross and Blue Shield Association, other third party payers, the National Senior Citizens Law Center, and organizations involved in operating or managing health care delivery systems.

We received numerous comments concerning our intention to propose in the future to eliminte time units as a separate element of the anesthesia payment formula and to increase the base unit value to include the average number of time units per procedure. Under this policy, payment would be determined solely on the basis of base units and a dollar conversion factor. Since this change is not being implemented now, we will address these comments when we publish a proposed rule on this matter. The remaining

comments received and our responses to those specific comments follow:

A. Choice of a Uniform Relative Value Guide

Comment: We did not receive any comments that opposed our selection of the 1988 ASA Guide as the uniform relative value guide or any comments suggesting that we select another guide. However, a few anesthesiologists indicated that the base unit value for cataract anesthesia should be revised from the current value of four units to either six or eight units.

Response: As we noted in the proposed rule, on October 7, 1986, we published a final notice that, under the inherent reasonableness statutory authority, lowered the base unit value for cataract anesthesia to four units; the reduction was effective for cataract anesthesia services furnished on or after January 1, 1987. In enacting section 9334(b)(1) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), Congress ratified that action. Since none of the commenters presented any evidence to show a change in circumstance since Congress and HCFA's prior action, we are not adopting this comment.

To accommodate the lower base unit value for anesthesia associated with an iridectomy, we have developed a new code to report this procedure. This code is Q0045, Anesthesia for iridectomy, and it has a base unit value of four. The uniform relative value guide, which is set forth as the Appendix to this final rule, has been revised to include this code.

B. Use of CPT–4 Anesthesia Codes or CPT—4 Surgical Codes to Report Anesthesia Services

Comment: Virtually all the anesthesiologists, the anesthesia specialty groups, and the organized medical groups favored the use of CPT–4 anesthesia codes instead of CPT–4 surgical codes to report anesthesia services, primarily because billing would be simplified. These commenters stated that the level of detail in surgical code descriptors is needed for surgical services, but is not necessary for anesthesia services. Some commenters, however, objected to the requirement that anesthesiologists include diagnostic coding information on the claim or bill for physicians' services furnished on or after April 1, 1989 because that information must be obtained from the operating surgeon.

Two commenters specifically expressed reservations about the movement to CPT–4 anesthesia codes. One of these commenters (a Medicare carrier) opposed the use of CPT–4 anesthesia codes and indicated that while the law requires HCFA to develop a uniform relative value guide, it did not mandate the use of CPT–4 anesthesia codes. The commenter also stated that the use of CPT–4 codes would result in the loss of information necessary to detect specific noncovered services, such as cosmetic surgery and medically unnecessary anesthesia procedures. As an alternative, this commenter suggested that we require the concurrent reporting of both the surgical and the anesthesia codes. The other commenter did not specifically object to the adoption of CPT–4 anesthesia codes but did not see any significant practical improvement to justify the change.

Response: We agree that section 4048(b) of Public Law 100–203 requires us to develop a uniform relative value guide but is silent on the use of coding systems. Operationally, we could link the ASA's base unit values to either the surgical code or the anesthesia code. We chose anesthesia codes. As we noted in the proposed rule (54 FR 3795), on February 1, 1983, we signed an agreement with the AMA to permit the Medicare and Medicaid programs to use the AMA's copyrighted CPT–4 for reporting physicians' services. As a result of that agreement, we adopted most of the medicine, surgery, radiology, pathology, and laboratory codes. At that time, however, we did not adopt the anesthesia codes because we thought it would be difficult for the carriers to ensure that the use of CPT–4 anesthesia codes would not result in higher program expenditures. Upon further review, we believe that we have been able to implement the relative value guide using CPT–4 anesthesia codes in a manner that will not increase program expenditures in the shortrun.

In the proposed rule, we expressed some concern that the decrease in the number of codes to report anesthesia services could lead to a loss of coding information and carriers might be unable to make proper coverage decisions in all cases. We pointed out in that document that the use of diagnosis codes as required by section 202(g) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) and the performance of postpayment services by carriers would help alleviate the problem of a loss of coding information. Furthermore, we will continue to work in cooperation with the ASA to develop additional codes to describe specific or general noncovered anesthesia services. We believe these initiatives will improve the CPT–4 anesthesia coding system and prevent payment for inappropriate anesthesia services.

We recently completed an analysis of surgical services that are generally not covered under Medicare to determine if there are anesthesia codes in existence for them which would permit carriers to identify and refuse payment on claims with respect to anesthesia related to noncovered procedures. We found that the CPT–4 anesthesia coding system does not include a separate code for blepharoplasty, which is generally not a covered service. Therefore, a separate anesthesia code must be developed for this procedure. The other noncovered procedures identified by our study are not high volume services, and thus, do not need a separate code.

We have established a new HCPCS code of Q0047 for "Anesthesia for blepharoplasty." This code is included in the final relative value guide set forth as the Appendix to this final rule. We are also including code 01996 "Daily hospital management of epidural or subarachnoid drug administration". This code replaces 99154 which had the same description as 01996 but was included in the Medicine category of CPT–4. The carrier's payment allowances for this code should be the lesser of the carrier's reasonable charge payment for code 99154, if the carrier paid this code under regular reasonable charge rules, or the product of three base units and the reasonable charge conversion factor.

With respect to those commenters who objected to the requirement that the diagnostic codes be included on the claim or bill for physicians' services, the requirement is mandated by the statute, and we do not have the authority to remove it. We are implementing this requirement through a separate rulemaking document. However, instructions for completing bills and requests for payment were distributed to the carriers on March 3, 1989. The carriers have sent this information to the physicians that they serve either through a newsletter or a bulletin.

C. Elimination of Modifier Units

We received comments on the elimination of modifier units, in general, and specific comments on the elimination of modifier units for certain circumstances, such as age or physical health status. The majority of commenters were anesthesiologists who favored the general use of modifier units for patient physical status. With a few exceptions, their comments were directed to the current carrier modifier system and not the more refined system proposed by the ASA. Those who supported physical status modifiers almost always indicated that physical status modifiers better measure

anesthesia risk and complexity of illness. Thus, modifiers make the system patient specific and more appropriately compensate for increased anesthetic risk. Several organizations recommended the general elimination of modifier units. We have addressed specific issues raised on modifier units below.

Comment: One commenter indicated that the use of modifiers in circumstances where the patient is age 70 or more without regard to the patient's actual physical condition or medical status is in violation of the Age Discrimination Act of 1975.

Response: We do not agree with the commenter that previous payment policy violated the Age Discrimination Act of 1975. Moreover, this regulation, which eliminates the use of modifiers, clearly cures whatever defect the commenter complained of with respect to prior policy.

Comment: One commenter stated that nothing in the provisions of section 4048(b) of Public Law 100–203 or the Conference Committee Report that accompanied the law suggests that Congress intended that modifier units be eliminated. In fact, the commenter indicated that the Committee Report specifically refers to the use of modifier units in determining payment for anesthesia services.

Response: We agree with the commenter that the law is silent on the issue of modifier units and whether modifier units are to be incorporated as an element of the uniform relative value guide. However, the reference in the Committee Report to modifier units is in context of an explanation of the provisions of the law with respect to a payment policy for anesthesia services prior to enactment of Public Law 100–203 (H.R. Rep. No. 495, 100th Congress, 1st Sess. 600 (1987)). It accurately explains that some carriers recognize adjustments relating to the patient's age or physical condition. Since the law is silent concerning modifier units, we believe we have the authority to eliminate their use under the relative value guide system.

Comment: Many commenters indicated that the elimination of modifier units will produce unfair redistributive results. Anesthesiologists in teaching hospitals or tertiary care centers or those who specialize in cardiac anesthesia and who treat more complex cases will be penalized while anesthesiologists whose patient mix contains a greater percentage of healthy Medicare patient will gain. Some anesthesiologists included in their comments anecdotal cases justifying the need for physical status modifiers for patients with certain medical problems.

Response: We do not have any evidence that anesthesiologists in teaching hospitals or those who specialize in certain cases will be disadvantaged significantly by the elimination of modifier units. In fact, one commenter, a State anesthesiology society, indicated that the nonrecognition of modifier units would be balanced by the payment of time units because those factors that are the basis for modifier units are generally factors that contribute to the length of time required for the anesthesia procedure. We note that the present system under which modifiers are recognized for age and physical status in addition to both time units and base units may result in a methodology that overvalues the amount recognized for some anesthesia services.

We also note that carriers in the New England region, the Middle Atlantic region, and the States of Florida and Michigan have not recognized modifier units. However there has not been any significant number of complaints from anesthesiologists in teaching hospitals in these areas that they have been negatively affected by the absence of modifier units. Therefore, as we stated in the proposed rule, we believe that the elimination of modifier units will not have a substantial adverse impact on individual anesthesiologists.

Comment: In its comment, the ASA advanced a proposal for instituting a uniform modifier unit policy that would achieve overall budget neutrality. Under the proposal, the age modifier and some other modifiers would be eliminated and physical status modifiers would be restructured. The ASA suggested that the budget savings associated with the elimination of age and some other modifiers and restructured physical status modifiers for those carriers that currently recognize modifiers would more than offset the increased expenditures for those carriers that would begin to recognize physical status modifiers.

Response: Policy considerations aside, we lack the data to conclusively prove that the ASA proposal will, indeed, be budget neutral or produce budget savings. A major problem is predicting the number of modifier units that would have been paid if the carriers had used the more refined ASA system previously. It would be equally difficult to measure the savings that would flow from the difference between the more refined system and the carriers' previous systems.

We are also concerned about inconsistency in method between this approach and ours. We instructed the carriers to maintain budget neutrality at the locality level to minimize the financial impact on anesthesiologists. The modifier unit approach suggested by ASA would attempt to maintain budget neutrality or produce saving at the national level. It would produce increases in payments for anesthesia services for those carriers that have not previously recognized modifiers. There could also be significant changes in payment for those carriers whose modifier unit policy was considerably more generous than that proposed by the ASA.

D. Separate Payments for Insertion of Arterial Lines, Central Venous Pressure Lines, and Swan-Ganz Catheters

Comment: Some anesthesiologists pointed out that the additional payments made for specialized monitoring such as intra-arterial, central venous, and Swan-Ganz are made based on the technical service; that is, the insertion of the arterial or central venous pressure line or a Swan-Ganz catheter. Additional payments are not made for specialized monitoring.

Response: The CPT–4 codes that describe the placement of lines are—

—Right heart catheterization, placement of flow directed catheter with or without balloon tip when placed for monitoring purposes, collection of blood, angiography (93503);

—Placement of central venous catheter (36488, 36489, 36490, 36491); and

—Arterial catheterization (36620, 36625, 36640, 36669).

When separate payment is made for these codes, payment is made for the placement or insertion of the line or catheter and not for the monitoring function that subsequently follows. Since these codes are listed under the medical or surgical procedure coding section, we are not viewing these services as anesthesia services subject to the uniform relative value guide. We are concerned, however, that these procedures are often performed together with other anesthesia services for a patient by the anesthesiologist. We will study the manner in which payment for these services might be integrated in the payment for anesthesia services.

Comment: Anesthesiologists and the professional organizations that represent them opposed the elimination of separate payments for placement of arterial, central venous, and Swan-Ganz lines. They recommend that anesthesiologists be paid separately just as other specialists, such as cardiologists or surgeons, for the insertion of lines or catheters for

specialized monitoring. The ASA recommended that these services be paid on the basis of uniform national base units that are listed in the ASA's relative value guide.

Response: As noted in the previous response, these services are not considered anesthesia services under the CPT–4 coding system. Therefore, they are, by definition, not relevant services subject to the uniform relative value guide for anesthesia services. We are deferring the development of a uniform policy for these services for all specialists who furnish the services. In the meantime, the carriers should continue their existing policies with regard to payment for these services.

E. Updating the Uniform Relative Value Guide

We received comments concerning the frequency of the update (for example, annually), the actual process by which revisions would occur, and the manner in which HCFA would communicate these revisions. The commenters' specific concerns are addressed below.

Comment: One commenter recommended that changes in the uniform relative value guide be handled once every year or 2 years.

Response: We proposed that the carriers establish base units for new procedures for which there is no established anesthesia code as they are developed. We also proposed to review carriers' experiences with this process every 3 years for the purpose of establishing uniform base unit values for these new procedures. We also stated in the proposed rule that we would propose revisions to base units for procedures where measurable technological changes have occurred on an "as needed" basis. Based on the comments we received and further analysis of how this process would work, we have decided to handle both types of updates on an "as needed" basis.

As needed, we will assemble a panel of medical advisors from both HCFA and the carriers who will review the base units assigned to established procedures to make sure the number of units assigned to the procedures still accurately reflect the value of the anesthesia services. At the same time, we will review the carriers' experience in assigning base units for new procedures, and establish a uniform national procedure code and base unit value for those new procedures. The results of this review will be published as a revision to the Medicare Carriers Manual (HCFA-Pub. 14). We are revising the proposed new § 405.553(d)(3) to reflect this process.

Comment: The ASA recommended that an advisory committee be established, either under ASA's or HCFA's sponsorship, to review procedural changes on a regular basis and make recommendations to HCFA on a regular basis. ASA suggested that the committee be composed of representatives of anesthesia providers, consumers, and third-party payers, including the Federal Government.

Response: We do not favor this process. The ASA currently has in place an organized method for reviewing its base unit system. We support a system in which the ASA makes its conclusions available to us. In turn, as discussed above, we will assemble a panel of our medical advisors and carrier medical advisors as needed to review the ASA conclusions and make a final decision on the base unit values. We will then publish any changes to the base unit values through a revision to the Medicare Carriers Manual.

Comment: The ASA pointed out that adjustments in the uniform relative value guide for technological reasons, which we proposed to make under the inherent reasonableness authority in § 405.502(h), are different from the cataract anesthesia adjustments previously made under that authority. As a result, the ASA recommends that routine adjustments in the uniform relative value guide resulting from historical need to update the guide periodically be carried out independent of the inherent reasonableness process.

Response: We concur with the ASA's recommendation. As discussed above, we will make adjustments to base units for technological reasons as part of the revisions to the relative value guide. The special charge limit, also discussed above, will not apply where base unit values are lowered. Rather, nonparticipating anesthesiologists must adjust their charges by lowering their base unit values to the lower base unit values.

F. Time Units

We did not receive any comments on the various alternatives we proposed to the current time unit policy. However, one organization offered a different alternative, as summarized below.

Comment: One commenter suggested that time units be divided into a specified number of segments and fractional time units allowed accordingly. For example, the 15-minute interval commonly used to determine a time unit value would be divided into three 5-minute intervals. If the personally performed procedure extended beyond 15 minutes but less than 20 minutes, 1⅓ time units would be allowed. Similarly, if the personally performed procedure extended beyond 20 minutes but less than 25 minutes, 1⅔ time units would be allowed.

Response: Section 6106 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) revises the method under which time units are determined for anesthesia services furnished by anesthesiologists or certified registered nurse anesthetists. Under section 6106 of Public Law 101–239, for anesthesia services furnished on or after April 1, 1990, a time unit is determined based on the actual time of the fractional time unit. Previously, a fractional time unit was counted as a full time unit. We discussed the method for calculating time units at length in the proposed rule; one of the alternatives we discussed was later embodied in section 6106 of Public Law 101–239. Since we previously solicited comments on this matter and the provisions in section 6106 of Public Law 101–239 are clear and, we believe, self-implementing, we are incorporating this provision in regulations without an additional comment period. We are illustrating below the calculation of a time unit from the actual time of a fractional time unit. We are instructing carriers to calculate time units to one decimal place.

Example: An anesthesiologist personally performs an anesthesia procedure on or after April 1, 1990. The procedure has a base unit value of six units and lasts 68 minutes or 4.5 time units. The reasonable charge conversion factor is $20. Thus, the reasonable charge for the anesthesia procedure in this particular instance is $210, that is, $\$20 \times (6.0 + 4.5)$.

We are also revising § 405.553 to reflect the policy on fractional time units for anesthesia procedures that are personally performed or medically directed by an anesthesiologist. As a result of the fee schedule system implemented for services furnished by CRNAs on or after January 1, 1989, all medically-directed services furnished by anesthesiologists are paid on the basis of one time unit per 30 minutes of anesthesia time. We have included this policy in our revisions to § 405.553.

G. Maximum Allowable Actual Charges

As discussed in the proposed rule (54 FR 3797), in order to ensure that expenditures for anesthesia services do not increase under the uniform relative value guide the carriers had to recompute customary, prevailing, and maximum allowable actual charge conversion factors (MAACs) for anesthesia services. The carriers released these revised conversion

factors to anesthesiologists in March 1989.

Because anesthesiologists have often priced their services using a different relative value guide than that used by the carrier, we have given nonparticipating anesthesiologists a choice on the system they could use to ensure compliance with the MAAC program.

An anesthesiologist could use the MAAC given by the carrier and price his or her service in conjunction with the carrier's specific relative value guide and anesthesia policy guidelines. On the other hand, anesthesiologists who decided to use their own conversion factors to establish their charges were cautioned to use the same pricing guidelines they used in the April 1 through June 30, 1984 base period and to increase their conversion factors by no more than one percent per year throughout the period the MAACs remain in effect.

In moving to the ASA relative value guide for base unit purposes, we are using the guide that we have been informed is the one that is accepted and used by the majority of anesthesiologists. In addition, we have adjusted conversion factors, including MAAC conversion factors, to reflect the elimination of modifier units. In light of these considerations, we are no longer offering anesthesiologists the choice of using their system to ensure MAAC compliance. Compliance will be established in conjunction with the carrier's MAAC. As a result, anesthesiologists must no longer bill additional amounts for modifier units.

We will, however, allow an exception to this policy in those carrier areas where the carrier has not recognized modifier units for patient age and status of physical health. In these areas, the choice described above will still be available to the nonparticipating anesthesiologist.

The implementation of the actual time unit policy for fractional time intervals, effective for anesthesia services furnished on or after April 1, 1990, affects the application of the MAAC. To ensure compliance with the MAAC for anesthesia services furnished on or after April 1, 1990, the anesthesiologist must lower his or her MAAC charge or reflect the way a fractional time unit is determined.

IV. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since none of the provisions being implemented in this final rule are expected to generate effects meeting one or more of the E.O. threshold criteria, we have not prepared a regulatory impact analysis.

B. The Regulatory Flexibility Act

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all anesthesiologists are considered to be small entities.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We did not receive any comments on the impact statements in the proposed rule, and none of the comments we received has caused us to significantly alter or revise the provisions of the proposed rule. Thus, the effects of this final rule are expected to be much the same as those we presented in the initial impact statement. In accordance with section 4048(b) of Public Law 100–203, we will require carriers to implement the new payment system in a manner such that payments under the uniform relative value guide do not exceed payments under the prior system. This rule does result in savings that are a result of the change in the time unit policy effective April 1, 1990, as required by Public Law 101–239; however, the savings are not due to the implementation of the relative value guide.

As a result of eliminating anesthesia modifier units, there may be some redistribution of payments from those anesthesiologists who used modifier units to those who did not use them. This redistributive effect will take place at the carrier "locality" level. There may be anesthesiologists within this locality who experience moderate increases or decreases in Medicare payments.

Based on the foregoing, we have determined and the Secretary certifies that this final rule will not have a significant effect either on a substantial number of small entities or small rural hospitals, we have not prepared either a regulatory flexibility analysis or an analysis of the effects of this rule on small rural hospitals.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR part 405, subpart E is amended as set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

1. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1834(b), 1842 (b) and (h), 1861 (b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395m(b), 1395u (b) and (h), 1395x (b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. Section 405.553 is amended by revising paragraphs (a), (b)(1)(i), (b)(2), and (c), and adding new paragraphs (d) and (e) to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

(a) *General rule.* In determining reasonable charge payment for anesthesiology services that meet the conditions in § 405.552(a), the carrier follows the rules in paragraph (b), (c), or (d) of this section, as applicable, and the rules in paragraph (e) of this section.

(b) *Services furnished before January 1, 1989 by the anesthesiologist or by an anesthetist employed by the anesthesiologist* (1)(i) The provisions of this paragraph apply to anesthesia

services furnished before January 1, 1989 by an anesthesiologist without the assistance of an anesthetist or to anesthesia services furnished to hospital outpatients or SNF or CORF patients by an anesthetist who is employed by an anesthesiologist.

* * * * *

(2) In determining reasonable charges for these anesthesia services, the carrier allows for no more than one time unit for each 15 minute interval, or fraction thereof, beginning from the time the physician or anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the physician or anesthetist is no longer in personal attendance.

* * * * *

(c) *Services furnished before January 1, 1989 by an anesthetist not employed by the anesthesiologist.* For services furnished before January 1, 1989, if the anesthetist who administers anesthesia under the direction of the anesthesiologist is not employed by the anesthesiologist, the carrier determines reasonable charges for the services by allowing no more than one time unit for each 30 minute interval, or fraction thereof, beginning from the time the anesthetist begins to prepare the patient for induction of anesthesia, and ending when the patient may be safely placed under post-operative supervision and the anesthetist is no longer in personal attendance.

(d) *Services furnished on or after January 1, 1989.*—(1) *Services personally furnished by an anesthesiologist.* (i) For anesthesia services furnished on or after January 1, 1989 but before April 1, 1990, if the anesthesiologist personally furnishes the service, the carrier determines reasonable charges for the services as described in paragraph (b)(2) of this section.

(ii) For determining reasonable charges for anesthesia services furnished on or after April 1, 1990, the carrier recognizes only the actual time of the fractional time interval.

(2) *Services medically directed by an anesthesiologist.* (i) For anesthesia services furnished on or after January 1, 1989 but before April 1, 1990, if the anesthesiologist medically directs procedures involving qualified anesthetists, the carrier determines reasonable charges for the services as described in paragraph (c)(2) this section.

(ii) For determining reasonable charges for anesthesia services furnished on or after April 1, 1990, the carrier recognizes only the actual time of the fractional time interval.

(e) *Use of a uniform relative value guide*—(1) *General rule.* For anesthesia services furnished by an anesthesiologist on or after March 1, 1989, the amount of payment for the service is determined based on a uniform relative value guide.

(2) *Selection of a uniform relative value guide.* The uniform relative value guide used is the 1988 American Society of Anesthesiologists' Relative Value Guide except that—

(i) The number of base units recognized for anesthesia services furnished during cataract or iridectomy surgery is four units;

(ii) Modifier units are not recognized; and

(iii) Base units associated with other than the Physicians' Current Procedure Terminology, Fourth Edition (CPT–4) anesthesia codes, such as those associated with medical or surgical services are not recognized.

(3) *Updating the uniform relative value guide.*—(i) *New procedures.* (A) For a new procedure that can be appropriately matched to an existing code, the carriers assign the new procedure to the existing code and the code's corresponding base unit value. HCFA does not review this type of code assignment.

(B) For a new procedure that cannot be matched to an existing code, the carriers establish a new procedure code and assign a base unit value to that new code. HCFA reviews the carriers' practices with new procedures that cannot be matched to existing codes as discussed in paragraph (e)(3)(ii) of this section.

(ii) *Revisions to current procedures and review of base units assigned to new procedures.* As needed, HCFA assembles a panel of its medical advisors and carriers' medical advisors to review revisions to base unit values for established procedures. In addition, HCFA reviews carriers' experiences with assigning base units for new procedures that cannot be matched to existing procedure codes. HCFA then establishes a uniform national code and a uniform national base unit value for each new procedure. The results of these reviews are published as a revision to the Medicare Carriers Manual.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance)

Dated: March 23, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: April 3, 1990.

Louis W. Sullivan,

Secretary.

Editorial Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Uniform Relative Value Guide

CPT–4	Procedure	Base units
	HEAD	
00100	Anesthesia for procedures on intergumentary system of head and/or salivary glands, including biopsy; not otherwise specified.	5
00102	plastic repair of cleft lip	6
00104	Anesthesia for electroconvulsive therapy.	4
00120	Anesthesia for procedures on external, middle, and inner ear, including biopsy; not otherwise specified.	5
00124	otoscopy	4
00126	tympanotomy	4
00140	Anesthesia for procedures on eye; not otherwise specified.	5
00142	lens surgery	4
00144	corneal transplant	6
00145	vitrectomy	6
00148	ophthalmoscopy	4
00160	Anesthesia for procedures on nose and accessory sinuses; not otherwise specified.	5
00162	radical surgery	7
00164	biopsy, soft tissue	4
00170	Anesthesia for intraoral procedures, including biopsy; not otherwise specified.	5
00172	repair of cleft palate	6
00174	excision of retropharyngeal tumor.	6
00176	radical surgery	7
00190	Anesthesia for procedures on facial bones; not otherwise specified.	5
00192	radical surgery (including prognathism).	7
00210	Anesthesia for intracranial procedures; not otherwise specified.	11
00212	subdural taps	5
00214	burr holes (For burr holes for ventriculography, see 01902.)	9
00216	vascular procedures	15
00218	Procedures in sitting position.	13
00220	spinal fluid shunting procedures.	10
00222	electrocoagulation of intracranial nerve.	6
	NECK	
00300	Anesthesia for all procedures on integumentary system of neck, including subcutaneous tissue.	5
00320	Anesthesia for all procedures on esophagus, thyroid, larynx, trachea and lymphatic system of neck; not otherwise specified.	6
00322	needle biopsy of thyroid	3

APPENDIX—UNIFORM RELATIVE VALUE GUIDE—Continued

CPT-4	Procedure	Base units
	(For procedures on cervical spine and cord see 00600, 00604, 00670)	
00350	Anesthesia for procedures on major vessels of neck; not otherwise specified.	10
00352	simple ligation	5
	(For arteriography; see radiologic procedure 01916)	
	THORAX (CHEST WALL AND SHOULDER GIRDLE)	
00400	Anesthesia for procedures on anterior integumentary system of chest, including subcutaneous tissue; not otherwise specified.	3
00402	reconstructive procedures on breast (e.g., reduction or augmentation mammoplasty, muscle flaps).	5
00404	radical or modified radical procedures on breast.	5
00406	radical or modified radical procedures on breast with internal mammary node dissection.	13
00410	electrical conversion of arrhythmias.	4
00420	Anesthesia for procedures on posterior integumentary system of chest, including subcutaneous tissue.	5
00450	Anesthesia for procedures on clavicle and scapula; not otherwise specified.	5
00452	radical surgery	6
00454	biopsy of clavicle	3
00470	Anesthesia for partial rib resection; not otherwise specified.	6
00472	thoracoplasty (any type)	10
00474	radical procedures (e.g., pectus excavatum).	13
	INTRATHORACIC	
00500	Anesthesia for all procedures on esophagus.	15
00520	Anesthesia for closed chest procedures (including esophagoscopy, bronchoscopy, thoracoscopy); not otherwise specified.	6
	(For transvenous pacemaker insertion, see 00530.)	
00522	needle biopsy of pleura	4
00524	pneumocentesis	4
00528	mediastinoscopy	8
00530	transvenous pacemaker insertion.	4
00540	Anesthesia for thoracotomy procedures involving lungs, pleura, diaphragm, and mediastinum; not otherwise specified.	13
00542	decortication	15
00544	pleurectomy	15
00546	pulmonary resection with thoracoplasty.	15
00548	intrathoracic repair of trauma to trachea and bronchi.	15
00560	Anesthesia for procedures on heart, pericardium, and great vessels of chest; without pump oxygenator.	15
00562	with pump oxygenator	20
00580	Anesthesia for heart or heart/lung transplant.	20

APPENDIX—UNIFORM RELATIVE VALUE GUIDE—Continued

CPT-4	Procedure	Base units
	SPINE AND SPINAL CORD	
00600	Anesthesia for procedures on cervical spine and cord; not otherwise specified.	10
	(For myelography and discography see radiological procedures 01906-01914.)	
00604	posterior cervical laminectomy in sitting position.	13
00620	Anesthesia for procedures on thoracic spine and cord; not otherwise specified.	10
00622	thoracolumbar sympathectomy.	13
00630	Anesthesia for procedures in lumbar region; not otherwise specified.	8
00632	lumbar sympathectomy	7
00634	chemonucleolysis	10
00670	Anesthesia for extensive spine and spinal cord procedures (e.g., Harrington rod technique).	13
	UPPER ABDOMEN	
00700	Anesthesia for procedures on upper anterior abdominal wall; not otherwise specified.	3
00720	percutaneous liver biopsy	4
00730	Anesthesia for procedures on upper posterior abdominal wall.	5
00740	Anesthesia for upper gastrointestinal endoscopic procedures.	5
00750	Anesthesia for hernia repairs in upper abdomen; not otherwise specified.	4
00752	lumbar and ventral (incisional) hernias and/or wound dehiscence.	6
00754	omphalocele	7
00756	transabdominal repair of diaphragmatic hernia.	7
00770	Anesthesia for all procedures on major abdominal blood vessels.	15
00790	Anesthesia for intraperitoneal procedures in upper abdomen including bowel shunts; not otherwise specified.	7
00792	partial hepatectomy (excluding liver biopsy).	13
00794	pancreatectomy, partial or total (e.g., Whipple procedure).	8
00796	liver transplant (recipient)	30
	(For harvesting of liver, use 01990.)	
	LOWER ABDOMEN	
00800	Anesthesia for procedures on lower anterior abdominal wall; not otherwise specified.	3
00802	panniculectomy	5
00806	Anesthesia for laparoscopic procedures.	6
00810	Anesthesia for intestinal endoscopic procedures.	6
00820	Anesthesia for procedures on lower posterior abdominal wall.	5
00830	Anesthesia for hernia repairs in lower abdomen; not otherwise specified.	4
00832	ventral and incisional hernias.	6

APPENDIX—UNIFORM RELATIVE VALUE GUIDE—Continued

CPT-4	Procedure	Base units
00840	Anesthesia for intraperitoneal procedures in lower abdomen; not otherwise specified.	6
00842	amniocentesis	4
00844	abdominoperineal resection.	7
00846	radical hysterectomy	8
00848	pelvic exenteration	8
00850	cesarean section	7
00855	cesarean hysterectomy	8
00857	Continuous epidural analgesia, for labor and cesarean section.	7
00860	Anesthesia for extraperitoneal procedures in lower abdomen, including urinary tract; not otherwise specified.	6
00862	renal procedures, including upper ⅓ of ureter or donor nephrectomy.	7
00864	total cystectomy	8
00866	adrenalectomy	10
00868	renala transplant (recipient)	10
	(For donor nephrectomy, use 00862.)	
	(For harvesting kidney from brain-dead patient, use 01990.)	
00870	cystolithotomy	5
00872	Anesthesia for lithotrypsy, extracorporeal shock wave.	7
00880	Anesthesia for procedures on major lower abdominal vessels; not otherwise specified.	15
00882	inferior vena cava ligation	10
00884	transvenous umbrella insertion.	5
	PERINEUM	
00900	Anesthesia for procedures on perineal integumentary system (including biopsy of male genital system); not otherwise specified.	3
00902	anorectal procedure (including endoscopy and/or biopsy).	4
00904	radical perineal procedure	7
00906	vulvectomy	4
00908	perineal prostatectomy	6
00910	Anesthesia for transurethral procedures (including urethrocystoscopy); not otherwise specified.	3
00912	transurethral resection of bladder tumor(s).	5
00914	transurethral resection of prostate.	5
00916	post-transurethral resection bleeding.	5
00920	Anesthesia for procedures on male external genitalia; not otherwise specified.	3
00922	seminal vesicles	6
00924	undescended testis, unilateral or bilateral.	4
00926	radical orchiectomy, inguinal.	4
00928	radical orchiectomy, abdominal.	6
00930	orchiopexy, unilateral and bilateral.	4
00932	complete amputation of penis.	4
00934	radical amputation of penis with bilateral inguinal lymphadenectomy.	6

APPENDIX—UNIFORM RELATIVE VALUE GUIDE—Continued

CPT–4	Procedure	Base units
00936	radical amputation of penis with bilateral inguinal and iliac lymphadenectomy.	8
00938	insertion of penile prosthesis (perineal approach).	4
00940	Anesthesia for vaginal procedures (including biopsy of labia, vagina, cervix or endometrium); not otherwise specified.	3
00942	colpotomy, colpectomy, colporrhaphy.	4
00944	vaginal hysterectomy	6
00946	vaginal delivery	5
00948	cervical cerclage	4
00950	culdoscopy	5
00952	hysteroscopy	4
00955	Continuous epidural analgesia, for labor and vaginal delivery.	5
	PELVIS (EXCEPT HIP)	
01000	Anesthesia for procedures on anterior integumentary system of pelvis (anterior to iliac crest), except external genitalia.	3
01110	Anesthesia for procedures on posterior integumentary sysem of pelvis (posterior to iliac crest), except perineum.	5
01120	Anesthesia for procedures on bony pelvis.	6
01130	Anesthesia for body cast application or revision.	3
01140	Anesthesia for interpelviabdominal (hind quarter) amputation.	15
01150	Anesthesia for radical procedures for tumor of pelvis, except hind quarter amputation.	8
01160	Anesthesia for closed procedures involving symphysis pubis or sacroiliac joint.	4
01170	Anesthesia for open procedures involving symphysis pubis or sacroiliac joint.	8
01180	Anesthesia for obturator neurectomy; extrapelvic.	3
01190	intrapelvic	4
	UPPER LEG (EXCEPT KNEE)	
01200	Anesthesia for all closed procedures involving hip joint.	4
01202	Anesthesia for arthroscopic procedures of hip joint.	4
01210	Anesthesia for open procedures involving hip joint; not otherwise specified.	6
01212	hip disarticulation	10
01214	total hip replacement or revision.	10
01220	Anesthesia for all closed procedures involving upper ⅔ of femur.	4
01230	Anesthesia for open procedures involving upper ⅔ of femur; not otherwise specified.	6
01232	amputation	5
01234	radical resection	8
01240	Anesthesia for all procedures on integumentary system of upper leg.	3
01250	Anesthesia for all procedures on nerves, muscles, tendons, fascia, and bursae of upper leg.	4
01260	Anesthesia for all procedures involving veins of upper leg, including exploration.	3
1270	Anesthesia for procedures involving arteries of upper leg, including bypass graft; not otherwise specified.	8
01272	femoral artery ligation	4
01274	femoral artery embolectomy.	6
	KNEE AND POPLITEAL AREA	
01300	Anesthesia for all procedures on integumentary system of knee and/or popliteal area.	3
01320	Anesthesia for all procedures on nerves, muscles, tendons, fascia and bursae of knee and/or popliteal area.	4
01340	Anesthesia for all closed procedures on lower ⅓ of femur.	4
01360	Anesthesia for all open procedures on lower ⅓ of femur.	5
01380	Anesthesia for all closed procedures on knee joint.	3
01382	Anesthesia for arthroscopic procedures of knee joint.	3
01390	Anesthesia for all closed procedures on upper ends of tibia and fibula, and/or patella.	3
01392	Anesthesia for all open procedures on upper ends of tibia and fibula and/or patella.	4
01400	Anesthesia for open procedures on knee joint; not otherwise specified.	4
01402	total knee replacement	7
01404	disarticulation at knee	5
01420	Anesthesia for all cast applications, removal, or repair involving knee joint.	3
01430	Anesthesia for procedures on veins of knee and popliteal area; not otherwise specified.	3
01432	arteriovenous fistula	5
01440	Anesthesia for procedures on arteries of knee and popliteal area; not otherwise specified.	5
01442	popliteal thromboendarterectomy, with or without patch graft.	8
01444	popliteal excision and graft or repair for occlusion or aneurysm.	8
	LOWER LEG (BELOW KNEE)	
	(Includes ankle and foot)	
01460	Anesthesia for all procedures on integumentary system of lower leg, ankle, and foot.	3
01462	Anesthesia for all closed procedures on lower leg, ankle, and foot.	3
01464	Anesthesia for arthroscopic procedures of ankle joint.	3
01470	Anesthesia for procedures on nerves, muscles, tendons, and fascia of lower leg, ankle, and foot; not otherwise specified.	3
01472	repair of ruptured Achilles tendon, with or without graft.	5
01474	gastrocnemius recession (e.g., Strayer procedure).	5
01480	Anesthesia for open procedures on bones of lower leg, ankle, and foot; not otherwise specified.	3
01482	radical resection	4
01484	osteotomy or osteoplasty of tibia and/or fibula.	4
01486	total ankle replacement	7
01490	Anesthesia for lower leg cast application, removal, or repair.	3
01500	Anesthesia for procedures on arteries of lower leg, including bypass graft; not otherwise specified.	8
01502	embolectomy, direct or catheter.	6
01520	Anesthesia for procedures on veins of lower leg; not otherwise specified.	3
01522	venous thrombectomy, direct or catheter.	5
	SHOULDER AND AXILLA	
	(includes humeral head and neck, sternoclavicular joint, acromioclavicular joint, and shoulder joint)	
01600	Anesthesia for all procedures on integumentary system of should and axilla.	3
01610	Anesthesia for all procedures on nerves, muscles, tendons, fascia, and bursae of shoulder and axilla.	5
01620	Anesthesia for all closed procedures on humeral head and neck, sternoclavicular joint, and shoulder joint.	4
01622	Anesthesia for arthroscopic procedures of shoulder joint.	4
01630	Anesthesia for open procedures on humeral head and neck, sternoclavicular joint, acromioclavicular joint, and shoulder joint; not otherwise specified.	5
01632	radical resection	6
01634	shoulder disarticulation	9
01636	interthoracoscapular (forequarter) amputation.	15
01638	total should replacement	10
01650	Anesthesia for procedures on arteries of shoulder and axilla; not otherwise specified.	6
01652	axillary-brachial aneurysm	10
01654	bypass graft	8
01656	axillary-femoral bypass graft.	10
01670	Anesthesia for all procedures on veins of shoulder and axilla.	4
01680	Anesthesia for shoulder cast application, removal or repair; not otherwise specified.	3
10682	shoulder spica	4
	UPPER ARM AND ELBOW	
01700	Anesthesia for all procedures on integumentary system of upper arm and elbow.	3
01710	Anesthesia for procedures on nerves, muscles, tendons, fascia, bursae of upper arm and elbow; not otherwise specified.	3
01712	tenotomy, elbow to shoulder, open.	5

APPENDIX—UNIFORM RELATIVE VALUE GUIDE—Continued

CPT–4	Procedure	Base units
01714	tenoplasty, elbow to shoulder.	5
01716	tenodesis, rupture of long tendon of biceps.	5
01730	Anesthesia for all closed procedures on humerus and elbow.	3
01732	Anesthesia for arthroscopic procedures of elbow joint.	3
01740	Anesthesia for open procedures on humerus and elbow; not otherwise specified.	4
01742	osteotomy of humerus	5
01744	repair of nonunion or malunion of humerus.	5
01756	radical procedures	6
01758	excision of cyst or tumor of humerus.	5
01760	total elbow replacement	7
01770	Anesthesia for procedures on arteries of upper arm; not otherwise specified.	8
01772	embolectomy	6
01780	Anesthesia for procedures on veins of upper arm and elbow; not otherwise specified.	3
01782	phleborrhaphy	4
	FOREARM, WRIST AND HAND	
01800	Anesthesia for all procedures on integumentary system of forearm, wrist and hand.	3
01810	Anesthesia for all procedures on nerves, muscles, tendons, fascia, bursae of forearm, wrist, and hand.	3
01820	Anesthesia for all closed procedures on radius, ulna, wrist, or hand bones.	3
01830	Anesthesia for open procedures on radius, ulna, wrist, or hand bones; not otherwise specified.	3
01832	total wrist replacement	6
01840	Anesthesia for procedures on arteries of forearm, wrist, and hand; not otherwise specified.	6
01842	embolectomy	6
01844	Anesthesia for vascular shunt, or shunt revision, any type (e.g., dialysis).	6
01850	Anesthesia for procedures on veins of forearm, wrist, and hand; not otherwise specified.	3
01852	phleborrhaphy	4
01860	Anesthesia for forearm, wrist, or hand cast application, removal or repair.	3
	RADIOLOGICAL PROCEDURES	
01900	Anesthesia for injection procedure for hysterosalpingography.	3
01902	Anesthesia for burr hole(s) for ventriculography.	9
01904	Anesthesia for injection procedure for pneumoencephalography.	7
01906	Anesthesia for injection procedure for myelography; lumbar.	5
01908	cervical	5
01910	posterior fossa	9
01912	Anesthesia for injection procedure for discography; lumbar.	5
01914	cervical	6
01916	Anesthesia for arteriograms, needle; carotid, or vertebral.	5

APPENDIX—UNIFORM RELATIVE VALUE GUIDE—Continued

CPT–4	Procedure	Base units
01918	retrograde, brachial or femoral.	5
01920	Anesthesia for cardiac catheterization including coronary arteriography and ventriculography (not to include Swan-Ganz catheter).	7
01921	Anesthesia for angioplasty	7
01922	Anesthesia for computerized axial tomography scanning or magnetic resonance imaging.	7
	MISCELLANEOUS PROCEDURE(S)	
01990	Physiological support for harvesting of organ(s) from brain-dead patient.	7
01995	Regional IV administration of local anesthetic agent (upper or lower extremity).	5
01996	Daily management of epidural or subarachnoid drug administration.	3
01999	Unlisted anesthesia procedure(s).	*I.C.
Q0045	Anesthesia for iridectomy	4
Q0047	Anesthesia for blepharoplasty	4

* Individual Consideration.

[FR Doc. 90–18327 Filed 8–6–90; 8:45 am]

BILLING CODE 4120–03–M

42 CFR Parts 412 and 413

[BPD–672–CN]

RIN 0938–AE73

Medicare Program, Fiscal Year 1990; Mid-Year Changes to the Inpatient Hospital Prospective Payment System; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors to the final rule published in the April 20, 1990 issue of the **Federal Register** (FR Doc. 90–9208), beginning on page 15150.

FOR FURTHER INFORMATION CONTACT: Barbara Wynn, (301) 966–4529.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the April 20, 1990 document:

1. On page 15151, in the second column, in the seventh line from the top, the word "date" is corrected to read "data".

2. On page 15154, in the first column, beginning with the third line from the top the clause "If the hospital's disproportionate patient percentage is less than 20.2 percent," is corrected to read "If the hospital's disproportionate patient percentage is equal to or less than 20.2 percent.".

§ 412.106 [Corrected]

3. On page 15174, in the third column, in § 412.106(d)(2)(i)(B), the clause "If the hospital's disproportionate patient percentage is less than 20.2 percent," is corrected to read "If the hospital's disproportionate patient percentage is equal to or less than 20.2 percent,".

§ 412.108 [Corrected]

4. On page 15175, in the third column in § 412.108, the designation of the second paragraph (d)(3)(i) is corrected to read (d)(3)(ii); and the designation of paragraph (d)(3)(ii) is corrected to read (d)(3)(iii).

5. On page 15179, in Table 2b, in the fifth line of the table, the wage index value for Lenawee, MI is corrected by changing "1.1580" to "1.0242".

6. On page 15179, in Table 2c, in the eighth line of the table, the wage index value for Morrow, OH is corrected by changing "0.8568" to "0.8650".

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: August 1, 1990.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 90–18420 Filed 8–6–90; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Puritan Tiger Beetle and the Northeastern Beach Tiger Beetle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The service determines threatened status for the Puritan tiger beetle (*Cicindela puritana*) and for the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), two beach-dwelling beetles of the family Cicindelidae. Critical habitat is not being designated. The Puritan tiger beetle was known historically from numerous sites along the Connecticut River in Vermont, New Hampshire, Massachusetts and Connecticut, and from along the Chesapeake Bay in

Maryland; it is now restricted to Maryland and two Connecticut River sites, one in Massachusetts and one in Connecticut. The northeastern beach tiger beetle once occurred commonly along coastal beaches from Cape Cod, Massachusetts, to central New Jersey and along the Chesapeake Bay, from Calvert County, Maryland, south; it is now evidently extirpated from the Atlantic Coast, save for one recently discovered tiny population on Martha's Vineyard in Massachusetts. Both tiger beetles are threatened by rapid human population increase and associated development and beach alteration in the areas they occupy. Recreational vehicles on beaches are particularly damaging to the beetles' larval habitat. Population and range reductions suffered by both beetles make them more prone to chance extinctions; more vulnerable to the effects of winter storms, predators, and parasites; and less able to recolonize areas previously occupied. This rule implements protection provided by the Endangered Species Act of 1973, as amended, for these beetles.

EFFECTIVE DATE: September 6, 1990.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours, at the Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs at the above address, or by telephone (301–269–5448).

SUPPLEMENTARY INFORMATION:

Background

Tiger beetles (genus: *Cicindela*) are day-active, predatory insects that capture small arthropods in a "tiger-like" manner, grasping prey with their mandibles (mouthparts). Tiger beetle larvae, which live in burrows in the ground, are also voracious predators, fastening themselves near the tops of the burrows by means of abdominal hooks and rapidly extending from their burrows to seize passing invertebrate prey. Over 100 species and many additional subspecies of tiger beetles occur in the United States (Boyd 1982). Because of their interesting behavior and variety of forms and habitats, tiger beetles have received much study; a journal devoted exclusively to these beetles, "Cicindela," has been published since 1969. The Puritan tiger beetle (*Cicindela puritana*) and the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), both associated with beach habitats, have received little ecological study until recently.

The Puritan tiger beetle is brownish-bronze above with a metallic blue underside and measures under 11.5 mm (½-inch) in total length. Each elytron (wing cover) is marked with narrow marginal and transverse white bands. It is distinguished from more common, similarly marked tiger beetles by the uneven or minutely broken edges of the middle band (Glaser 1984). Originally described by G. Horn (1876), *C. puritana* was later considered a subspecies of *Cicindela cuprascens* (Leng 1902, Horn 1930) and a subspecies of *Cicindela macra)* (Vaurie 1951). Most recently, Willis (1967) established separate species status for these three taxa. The range of *C. puritana* is separated by several hundred miles from the overlapping ranges of *C. macra* and *C. cuprascens.*

Historically, the Puritan tiger beetle occurred in scattered localities along the Connecticut River in Vermont, Connecticut, New Hampshire, and Massachusetts, and along the Chesapeake Bay in Calvert County, Maryland. Within the Chesapeake Bay, its habitat is characterized by the presence of narrow sandy beaches with adjacent, well-developed bluffs of sand and clay (Glaser 1984, Knisley 1987, Knisley and Hill, 1990). Habitat of the Connecticut River population in Massachusetts is similar, with steep, clay banks adjacent to a wider (10 meters or greater) sandy beach (Nothnagel 1987).

Along the Chesapeake Bay in Maryland, Puritan tiger beetle adults are first seen in mid-June. Their numbers peak in early July and begin to wane by late July. The newly-emerged beetles feed and mate along the beach area. After mating, females move up onto the cliffs to deposit their eggs. Newly-hatched larvae construct burrows in the cliffs. The larvae pass through three instars (larval stages) before metamorphasis to the adult form. The full life cycle was believed to occur in a single year, but recent studies indicate that two years may be required (B. Knisley, Randolph-Macon College, pers. comm., 1990). Knisley 1987) found larval burrows in moist areas of sandy clay cliffs adjacent to the beaches where the adults were found, and along the back areas of these beaches. Statistical analysis of habitat features indicated that the presence of well-developed, sparsely vegetated cliffs as oviposition (egg-laying) sites is more important for this beetle than is the quality of adjacent beaches.

Most New England collection records for the Puritan tiger beetle were from the period 1900 to 1920, with the most recent collection in 1939 (Knisley 1987). Subsequent vigorous collection attempts were unsuccessful, leading to the belief that the Puritan tiger beetle was likely extinct in New England. In July of 1986, however, a population of the Puritan tiger beetle was discovered in Hampshire County, Massachusetts, on a small island in the Connecticut River, and on a sandy beach several hundred meters to the south. This population is very small (50–100 adults) and declined in 1988 and 1989 (P. Nothnagel, pers. comm. 1990). Reasons for this decline are discussed under Factor A below. This past summer, another *C. puritana* population was located near Cromwell, Middlesex County, Connecticut, a historical site for the species. This population is larger than the Massachusetts population and apparently less threatened by human activity. In contrast to the habitat of all other known *C. puritana* populations, this site has no associated clay banks or cliffs; larvae burrow in the ground. (Nothnagel 1989).

South of New England, the Puritan tiger beetle is restricted to a 26-mile stretch of the western shore of the Chesapeake Bay in Calvert County, Maryland, and a 1.5-mile section of the Sassafras River on Maryland's eastern shore, in Kent and Cecil Counties. Status survey work conducted in Calvert County during the summers of 1985 and 1986 revealed five large populations (600+ individuals) and four small populations (100 or fewer individuals) (Knisley, 1987). The Sassafras River populations, discovered July of 1989, are medium-sized (100–500 adults), and may actually represent fewer than four discrete populations (B. Knisley, pers. comm.). It should be noted that great fluctuations in numbers of adult beetles may occur naturally from year to year. Puritan tiger beetle populations in Maryland are potentially threatened by habitat alteration and human encroachment as detailed below.

The northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*), described as *C. dorsalis* by Say (1817), has white to light tan elytra, often with fine dark lines, and a bronze-green head and thorax. It is somewhat larger than the Puritan tiger beetle, measuring 13 to 15.5 mm (1/2 to 3/5 inch) in total length.

Cazier (1954) considered *C. dorsalis* and three other previously described species as subspecies of the single species *C. dorsalis.* Boyd and Rust (1982) confirmed that these four subspecies are clearly distinguishable. Recent morphological analyses and breeding experiments indicate that *C. dorsalis dorsalis* is most likely a full species (Knisley and Hill 1990b). Until

this information is published, however, it is most appropriate to continue to refer to this taxon as a subspecies.

Northeastern beach tiger beetle larvae occupy burrows directly on the beach, in and above the high-tide zone. Rearing experiments (Stamatov 1972) and field observations by Knisley indicate these beetles have a full two-year life cycle, over-wintering twice as larvae, pupating at the bottoms of their burrows, and emerging as winged adults during their third summer. Adults emerge from early June through August, with peak abundance in mid-July. Adults forage mostly in the damp sand of the intertidal zone and apparently scavenge on dead fish and invertebrates for much of their diet (Knisley 1987, Knisley and Hill 1990). Habitat characteristics significantly correlated with the presence of northeastern beach tiger beetles include large beach size (length and width), high degree of exposure (dynamic beaches), fine sand particle size, and low human and vehicle activity (Knisley 1987).

Historically, the northeastern beach tiger beetle occurred on sandy beaches from Cape Cod, Massachusetts south to central New Jersey, and along the Chesapeake Bay of Maryland and Virginia. Early records indicate the abundance of this beetle on the northeast coast. Leng (1902) states that it occurred "in great swarms in July" from Martha's Vineyard south to New Jersey. Boyd (1978) cites many references, mostly from the 19th century, indicating the species' abundance in New Jersey. It was also common along the beaches of Rhode Island and Long Island, New York (Knisley 1987).

Between 1920 and 1950, the number of collections of the northeastern beach tiger beetle dropped precipitously (Knisley *et al.* 1987). Stamatov (1972) noted that northeastern beach tiger beetles were declining, and had possibly disappeared from New York and New Jersey. He suggested that this decline might be associated with increasing vehicular traffic along the beaches. He did report the existence of a breeding population at Block Island, Rhode Island. This population apparently was extirpated shortly thereafter.

During the summer of 1989, a tiny population of *C. d. dorsalis* was discovered on a privately owned section of beach on Martha's Vineyard, Massachusetts (T. Simmons, TNC, prs. comm., 1989). This population, consisting of fewer than 40 adults, is presently the only one known for this tiger beetle north of Maryland. Most of the species' historical habitat in New England has been intensively searched, without locating additional populations (Knisley 1987; J. Stamatov, pers. comm., 1990; J. Shetterly, pers. comm., 1990). Studies should be conducted in the near future to determine whether this population is taxonomically distinct from those in the Chesapeake Bay. If this proves to be the case, endangered status would certainly be warranted for these New England beetles.

In Maryland, the northeastern beach tiger beetle is known from four locations along the Chesapeake Bay in Calvert County (Knisley 1989). Two of these populations are large and two are medium-sized. Three populations occur on private land owned by housing subdivision communities. One large population occurs in a county park.

During the summer of 1989, intensive searches for *C. d. dorsalis* were conducted along Virginia's Chesapeake Bay shoreline by staff of the Virginia Natural Heritage Program (VNHP). As a result of these surveys, a total of 40 populations of this tiger beetle were located (C. Pague, VNHP, pers. comm., 1989). Most of these are found in Northumberland, Matthews, and Northampton Counties. The balance occur in Accomack and Gloucester Counties. Some of these populations are located on sand spits or areas with low human use or vehicle accessibility.

Apparently, the factors causing the extirpation of this beetle from New England are not yet fully operable in Virginia and Maryland. However, the Chesapeake Bay shoreline is experiencing an unprecedented increase in residential development and recreational use. Furthermore, many areas of shoreline have been "hardened" by installation of bulkheads or riprap and are no longer suitable for occupancy by these beetles.

The northeastern beach and Puritan tiger beetles were first recognized by the Service in the **Federal Register** Notice of Review published on May 22, 1984 (49 FR 21664). That notice, which covered invertebrate wildlife being considered for classification as endangered or threatened, included these two beetles in Category 2. Category 2 comprises those taxa for which listing is possibly appropriate, but for which existing information is insufficient to support a proposed rule. In response to the publication of this notice, the Service received comments from the American Entomological Society expressing their view that the northeastern beach tiger beetle clearly qualified for endangered status, and that the status of the Puritan tiger beetle was questionable. The lack of available biological data on these taxa was also noted. Accordingly, in 1985, the Service contracted with Dr. Barry Knisley, Randolph-Macon College, Ashland, Virginia, to conduct status survey work on these two beetles. Dr. Knisley's final report to the Service (Knisley 1987) provided substantial information that a proposal to list both species was warranted. The **Federal Register** Notice of Review published on January 6, 1989, (54 FR 555) included these two beetles in Category 1, indicating that the Service possessed sufficient information to support a proposal to list them. Subsequently, on October 2, 1989, the Service published a proposal in the **Federal Register** (54 FR 40458) to list *Cicindela dorsalis dorsalis* as endangered and *Cicindela puritana* as threatened. Status survey work conducted in Virginia during the summer of 1989 revealed many additional populations of *C. d. dorsalis*, indicating that threatened status would be more appropriate for this beetle. With the publication of this final rule, the Service now determines threatened status for these beetles.

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule (54 FR 40458) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Comments were requested from appropriate state agencies, county governments, scientific organizations, and other interested parties. Newspaper notices inviting public comment were published on October 18, 19, or 20 in two newspapers in Massachusetts, two in Virginia and one in Maryland, all of local circulation in the areas where the beetles occur. A total of 14 comments were received. None of these opposed the listing. Three letters of comment, from the County of York, Virginia, the Soil Conservation Service, and the Virginia Institute of Marine Science, acknowledged receipt of the proposed rule, and expressed no position on the proposed listings. A letter from the State of Connecticut, Department of Environmental Protection, also expressed no official position but supplied further information, which has been incorporated into this final rule. Three letters were received from the U.S. Army Corps of Engineers. Those from New England Division and the Philadelphia District indicated that the proposed listing was not expected to impact their operations. The letter from the Baltimore District expressed no official position, but supplied comments that have been incorporated in this final rule. Letters from the Audubon Naturalist Society, and The Nature

Conservancy, Massachusetts/Rhode Island Office, offered their full support for the listings. Three letters, from the Maryland Department of Natural Resources, the Massachusetts Division of Fisheries and Wildlife, and a private individual who is a student of tiger beetles, Mr. J. A. Shetterly, supported the proposal and offered valuable comments, which have been incorporated in this final rule. A letter from attorneys representing the developers of a large tract of land on Virginia's eastern shore indicated that many additional populations of *Cicindela dorsalis dorsalis* had recently been located in Virginia and expressed the opinion that listing of this beetle as endangered was premature. Along a similar line, a letter from the Virginia Natural Heritage Program summarized the recent locations for this beetle in Virginia and indicated that their data would not support endangered status for these beetles, but would support a threatened status. Upon review of these recently acquired data, the Service concurs with these positions and has altered the final rule accordingly.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 153 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. Species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Puritan tiger beetle (*Cicindela puritana*) and northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Although it once occurred in swarms on many beaches along the New England coast, and as far south as central New Jersey, the northeastern beach tiger beetle's range along the Atlantic Coast is now reduced to a single tiny population in Massachusetts. All factors contributing to this dramatic range contraction are not known, but much of the decline can be attributed to the impacts of humans and vehicles on beaches (Stamatov 1972 and pers. comm., 1990, Boyd 1978 and pers. comm., 1990, Knisley, 1987 and pers. comm., 1990). Northeastern beach tiger beetle larvae are particularly vulnerable to direct crushing or repeated compaction of their burrows by vehicles and heavy human use for two reasons. First, they occur in the intertidal zone and are therefore unavoidably in the path of beach users and their vehicles. Secondly, due to their prolonged life cycle, these beetles must pass through two summers in their vulnerable larval stage.

The significant impact of vehicles on this beetle is illustrated by a study of the related *Cicindela dorsalis media*, which Dr. Knisley conducted on Assateague Island in 1985. Adults and larvae were found only on the northern 2-mile section of the island where vehicles were restricted and human activity light. No beetles were found on the remaining 10–12 miles of beach in Maryland, including the State Park portion and the southern portion, where off-road vehicle activity is heavy. But just below the state line in Virginia, where vehicles are prohibited, adult beetles could again be found. A study of the impacts of human foot traffic on northeastern beach tiger beetle larvae in the Maryland yielded similar results; the abundance and survival of larval tiger beetles is inversely correlated with the amount of human traffic that an area receives (Knisley and Hill 1990). Southern Maryland and coastal Virginia are developing rapidly. Visible signs of development in Calvert County, Maryland, include the widening of Routes 2–4 in the southern part of the county and creation and expansion of numerous housing developments. One of Maryland's two large populations of this species occurs on a county park which opened in 1986. Since that time, the number of visitors to the park per year has increased more than six-fold. A private campground now occurs at one of Virginia's largest beetle population beaches, and several "planned community" developments have been proposed near other large populations on the eastern shore of the Chesapeake Bay. Such development leads to increased human and vehicular activity on the beaches, as well as construction of marinas and increased use of bulkheads and other structures that may eliminate or alter the beetles' beach habitat.

Pollution and alteration of the intertidal beach areas are also potential threats to these beetles. Spills of oil or other pollutants that reach the shore could be lethal to the tiger beetle larva directly or indirectly, by interfering with their feeding behavior or diminishing their prey base. Dredged material placed on beaches could also destroy larvae directly, although the long-term impacts of beach nourishment could benefit the beetles. This requires further study.

In contrast to northeastern beach tiger beetles, Puritan tiger beetle larvae generally burrow on beachside cliffs and back beaches, where they are less susceptible to direct impacts of human and vehicular traffic or other perturbations of intertidal habitat. However, this species has not escaped the effects of habitat degradation, particularly where it occurred along the Connecticut River. A recent assessment of *C. puritana* historical collection sites along the Connecticut indicates that 23% have been flooded by dams, 38% have been heavily urbanized, and 8% have been riprapped and stabilized. Along the entire course of the Connecticut River, in addition to the two known extant sites, only two sites are considered suitable to support (re-introduced) *C. puritana* populations (Nothnagel 1989). The one extant population in Massachusetts appears to be threatened by human activity. The beach is used heavily by power boaters, motorcycles and all-terrain vehicles from May through September, and the larval habitat is a locally popular camping area.

Cliff stabilization is another form of habitat alteration affecting the Puritan tiger beetle today. Continual erosion and breakdown of the cliffs, from wave action and rainfall, is necessary to create the newly exposed areas needed for oviposition and larval development. Construction of bulkheads or other means of cliff stabilization may destroy larval habitat directly, and also promotes growth of kudzu and other introduced vegetation on cliff faces, making the cliffs unsuitable for the larvae (Knisley 1987, Knisley and Hill 1989). The majority of the Puritan tiger beetle population sites on Maryland's western shore are bordered by housing subdivisions. Small areas of bayside cliffs in Calvert County have been razed to enhance visual aesthetics, and there are an increasing number of permit applications for construction of bulkheads, breakwaters, and other such structures. Permits are not required for vegetating the cliffs, or for placement or riprap material at the cliff base, as long the material is placed above mean high tide. Along Maryland's eastern shore, potential tiger beetle habitat is also being lost. Searches for *C. puritana* at the mouth of the Elk River were unsuccessful, possibly because the area was recently stabilized with riprap and wire screen (Knisley and Hill 1990)

B. Overutilization for Commercial, Recreational Scientific or Educational Purposes

It is no exaggeration to state that tiger beetles (genus *Cicindela)* are the most highly sought after by amateur collectors of all beetle genera. Additionally, tiger beetles are frequently used as model organisms in physiological and ecological studies. In fact the genus *Cicindela* may be the subject of more intense collecting and study than any other single insect genus. This interest in tiger beetles is reflected in the publication since 1969 of a journal named for, and largely devoted to, this genus.

At present, collecting pressure on adult beetles is not believed to be contributing to the decline of these species; threats to larval survival appear to outweigh any threats to adults. However, the proposed listing of these beetles as threatened could increase their desirability and perceived value to collectors.

C. Disease or Predation

These tiger beetles are not known to be susceptible to any diseases that would threaten their survival; however, two insects known to be natural enemies have been commonly observed in their habitat. Knisley (1987) found adults of the wingless wasp, *Methocha*, at several population sites. Female *Methocha* attack and paralyze tiger beetle larvae, then lay a single egg on the beetle larva, so that their own larva may use the beetle for a food source as it develops. This parasitoid may account for significant tiger beetle mortality. Robber flies (family Asilidae) were also seen commonly at most sites visited by Knisley. These predatory flies perch and wait for adult tiger beetles or other flying prey and capture them out of the air. Ten unsuccessful attacks of robber flies on northeastern beach tiger beetles were observed during status survey work (Knisley 1987). Normally, these predators and parasitoids, which evolved in conjunction with the tiger beetles, would not pose a severe threat to the survival of their host (or prey) species, since this would, in the long run, threaten their own survival. However, this natural balance has been altered by habitat degradation and other factors, such that now these natural enemies may in some cases pose significant threats to the beetles' survival.

D. The Inadequacy of Existing Regulatory Mechanisms

The Puritan and northeastern beach tiger beetles are both classified as endangered under Maryland state law, and their take is prohibited, except as permitted for scientific research. While this lends some protection to individual beetles, it does not adequately protect the larval beetles' habitat. However, this habitat does receive protection under Maryland's progressive Critical Areas legislation. All Maryland populations of both tiger beetles occur within the Critical Area (defined as that area within 1000 feet of the Bay or its tributaries). For any site within the Critical Area occupied by a state-designated endangered or threatened species, development and disturbance activities are greatly curtailed and in many instances are prohibited. In addition, local jurisdictions are directed to provide for the protection of those species in their local planning program. Four of the Maryland tiger beetle sites are designated as Natural Heritage Areas by regulation, further defining their protection. Without such strict protection, it is likely that the Puritan tiger beetles would qualify for endangered, rather than threatened, status. These beetles are not presently protected under Virginia's Endangered Plant and Insect Protection Act, but if they are federally listed, they will be automatically added to the State list. This law provides protection from taking, but does not regulate habitat alteration. While both tiger beetles are on the State "Endangered" list in Massachusetts, the State Endangered Species Act has not yet been approved by the legislature. However, the beetles and their habitat are protected in Massachusetts under the Wetlands Protection Act, which requires permit applicants to consider the requirements of listed species in their project plans. The State of Connecticut has passed endangered species legislation, which provides protection from take, but as yet has no official endangered species list. It is likely that *C. puritana* will be placed on the State list when one is drawn up.

E. Other Natural or Man-made Factors Affecting Their Continued Existence

Severe flooding may have contributed to the near extinction of the Puritan tiger beetle from the Connecticut River system. New England's worst floods occurred in 1927 and 1936, at about the same time new collection records for this species ceased (Knisley 1987). These intensive floods, which may have been exacerbated by timbering activities in the watershed, likely inundated the adult beetles' beach habitat and/or stripped off portions of riverside cliffs where the larvae occurred.

Populations of both tiger beetle species normally experience very high larvae mortality and dramatic year-to-year variations in abundance and local extinctions, due to factors such as flood tides, hurricanes, winter storms, and other natural phenomena. A series of nearby or contiguous populations is probably necessary to re-establish populations that have been locally depleted or extirpated. Both decrease in habitat size and number of populations make it difficult for beetles to recover from population declines caused by natural or human-related factors. Small habitat size supports a smaller population with a greater probability of extinction. Gradual elimination or disruption of adjacent habitat eliminates the source of beetles for recolonization of extirpated population sites. This problem has apparently been more severe from New Jersey to Massachusetts, where climatic conditions for the beetles are less favorable and human pressures on habitats greater.

The Service had carefully assessed the best scientific and commercial information regarding past, present and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list both the northeastern beach tiger beetle (*Cicindela dorsalis dorsalis*) and the Puritan tiger beetle (*Cicindela puritana*) as threatened. The October 2, 1989, proposed rule (54 FR 40458) concluded that endangered status was appropriate for *C. d. dorsalis*. Information that has come into the Service's possession since the proposal was developed indicates that *C. d. dorsalis* is more abundant along the Chesapeake Bay shoreline of Virginia than previously believed. Due to this beetles' proven vulnerability to habitat alteration and human activity, as evidenced by its demise along the Atlantic Coast, listed status is still warranted. The Service concludes that threatened status is most appropriate for this beetle. For the Puritan tiger beetle, threatened status, as indicated in the proposed rule, is still deemed most appropriate.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. As mentioned in Factor B above,

tiger beetle specimens are considered very valuable to collectors. Publication of maps detailing the specific locations of these beetles would increase the probability of their being over-collected, especially at sites containing smaller populations. Protection for these species and their habitats will be addressed through the section 7 jeopardy standard and through the recovery process. On balance, the threat of over-collection as a result of designation of critical habitat would outweigh any benefit of such designation. Therefore, it is not prudent to determine critical habitat for these beetles at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsibile Federal agency must enter into formal consultation with the Service. Private developers who are working without any Federal permits, other authorizations, or monies, will be unaffected under this rule with respect to section 7(a), but would be subject to restrictions against take, as specified in section 9 of the Act and implementing regulations.

The U.S. Army Corps of Engineers (Corps) has jurisdiction over much of the area inhabited by these tiger beetles. Projects possibly affecting the beetles would include dredged material disposal, beach erosion control measures, marina construction, and other developments affecting beach areas. Other Federal agencies that could possibly be affected by this listing action would include the U.S. Coast Guard, National Marine Fisheries Service, Soil Conservation Service, and other agencies conducting or overseeing projects in coastal areas or along the Connecticut River.

At present, the only Federal projects or permitting actions known to the Service that could affect these beetles include several minor dredged material disposal operations, and a proposed campground facility on Virginia's lower eastern shore. The Corps and affected landowners are aware of this listing and are working with the Service to avoid any adverse impacts to the beetles associated with these projects.

The listing of these beetles also brings sections 5 and 6 of the Endangered Species Act into full effect in their behalf. Section 5 authorizes the acquisition of lands for the purpose of conserving endangered and threatened species. Pursuant to section 6, the Service may grant funds to affected states for management actions aiding the protection and recovery of the beetles.

Listing these tiger beetles as threatened provides for development of a recovery plan (or plans) for them. Such plan(s) will bring together State and Federal, and private efforts for conservation of the beetles. The plan(s) will establish an administrative framework, sanctioned by the Act, for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) also set recovery priorities and estimate the cost of various tasks necessary to accomplish them. They assign appropriate functions to each agency and a time frame within which to complete them. They will also identify specific areas that need to be monitored and possibly managed for the beetles.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened animal species under certain circumstances. Regulations governing permits are at 15 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species there are also permits for zoological exhibition, educational purposes, or other purposes consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Office of Management Authority, Permits Branch, P.O. Box 3507 Arlington, VA 22203–3507 (703/358–2104).

National Environmental Policy Act

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

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Author

The primary author of this rule is Judy Jacobs, Annapolis Field Office, U.S. Fish and Wildlife Service, 1825 Virginia Street, Annapolis, Maryland 21401 (301) 269–5448.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

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

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

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

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Insects, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Insects:							
*	*	*	*	*	*	*	
Beetle, northeastern beach tiger.	*Cicindela dorsalis dorsalis*	U.S.A. (CT, MA, MD, NJ, NY, PA, RI, VA).	NA	T	396	NA	NA
Beetle, Puritan tiger	*Cicindela puritana*	U.S.A. (CT, MA, MD, NH, VT).	NA	T	396	NA	NA
*	*	*	*	*	*	*	

Dated: July 5, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–18380 Filed 8–6–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 91046–0006]

Groundfish of the Bering Sea Subarea

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

ACTION: Notice of prohibition of retention of groundfish.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), is prohibiting further retention of sablefish by vessels fishing with hook-and-line and pot gear in the Bering Sea subarea. This action is necessary to prevent the total allowable catch (TAC) for sablefish in the Bering Sea from being exceeded before the end of the fishing year. The intent of this action is to assure optimum use of groundfish while conserving sablefish stocks.

EFFECTIVE DATE: Noon, Alaska local time (ALT), August 2, 1990, through midnight, ALT, December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the Bering Sea and Aleutian Islands Area under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council and was implemented by regulations appearing at 50 CFR 611.93 and part 675.

Under § 675.24(c)(2), when the Regional Director determines that the share of the sablefish TAC assigned to any type of gear in any area has been achieved prior to the end of a fishing year, the Secretary of Commerce will publish a notice requiring sablefish to be treated in the same manner as prohibited species, as described in § 675.20(c), by persons using that type of gear in that area for the remainder of the fishing year.

The TAC for sablefish in the Bering Sea subarea was set at 2,295 metric ton (mt), of which the fixed gear (hook-and-line and pot gear) share is 1,147 mt (55 FR 1434; January 16, 1990). The Regional Director has determined that the TAC of sablefish for vessels using hook-and-line and pot gear in the Bering Sea subarea has been reached. Therefore, he is issuing this notice requiring sablefish be treated in the same manner as prohibited species and is prohibiting retention of sablefish by vessels using hook-and-line and pot gear in the Bering Sea subarea from noon, ALT, August 2, 1990, through midnight, ALT, December 31, 1990.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. The TAC for sablefish by vessels using hook-and-line and pot gear in the Bering Sea subarea will be exceeded unless this notice takes effect immediately.

This action is taken under the authority of §§ 675.20(c) and 675.24(c)(2) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: August 1, 1990.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–18346 Filed 8–1–90; 4:11 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 152
Tuesday, August 7, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-208]

Papayas; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action will withdraw the proposed rule to establish United States Standards for Grades of Papayas. Comments received in response to the notice of proposed rulemaking indicate a significant lack of consensus within the industry over the proposed standard.

DATES: This withdrawal is effective August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Michael J. Dietrich, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056–South, Washington, DC 20090–6456, (202) 447–2185.

SUPPLEMENTARY INFORMATION: In April 1984, the Hawaii Board of Agriculture, on behalf of the Papaya Administrative Committee, formally requested the Agency to develop U.S. Standards for Grades of Papayas. A market survey was drafted by the Fresh Products Branch of the Agency's Fruit and Vegetable Division and sent to industry and other interested parties for comment. No responses were received and all activity concerning the standards development was suspended. In August 1988, the Papaya Administrative Committee made another request for standards development. A proposed rule to establish U.S. Standards for Grades of Papayas was published in the **Federal Register** on October 11, 1989 (54 FR 41597–41599). The proposed rule invited interested persons to submit written comments. A request by J.R. Brooks and Son, Inc., a grower/packer/importer of papayas, to extend the comment period an additional 30 days was granted.

Twelve responses were received by the end of the comment period on January 10, 1990. A total of three respondents favored the proposal; two supporting the proposed rule in its entirety, and one approving the proposal if certain revisions were made to it. Five responses opposed the proposal. Three resposes requested additional time in which to comment. A single response did not express either opposition or acceptance of the proposal, but merely requested revisions.

While the industry, in general, agrees that a U.S. grade standard would be beneficial, basic differences of fruit grown and marketed in various areas of the U.S. creates a sharp division within the industry.

Fruit grown and marketed by Hawaiian industry members is significantly different from that grown in Florida and the Caribbean. Hawaiian papaya marketing to the U.S. mainland is focused primarily on round or pyriform varieties, and the papayas are customarily shipped in 10-pound containers.

Florida and Caribbean countries market large, oblong varieties. Papaya Varieties can range in size from those measuring 3 inches in length and weighing a fraction of a pound (Hawaiian) to those reaching 18 inches in length and weighing up to 20 pounds per fruit (Florida and Caribbean). It would be difficult for larger fruit to meet the size requirements as defiend in the current proposal, which states: "Papayas packed in any container must be fairly uniform in size. Fairly uniform in size means that the difference in weight between the largest and the smallest papaya in any container does not exceed 8 ounces." Persons living in largely Hispanic, and southeast Asian communities in the United States utilize papayas that are intentionally harvested when the fruit is immature for use in their native dishes. These payayas would not meet the basic grade requirements of "mature" as specified by the proposal.

Also, payayas from Florida and the Caribbean tend to mature all at once, whereas the Hawaiian product matures gradually from blossom end to stem end, which can be characterized by a "tinge of yellow color" as suggested by the proposed standard.

In view of the lack of industry consensus in favor of the proposal, the proposed rule is being withdrawn. Withdrawal will in no way inhibit industry representatives from discussing these areas of concern with the entire industry. The Department is prepared to assist industry in its continuing efforts to resovle these issues.

In consideration of the foregoing, the proposed rule published in the **Federal Register** (Vol. 54, No. 195, Pages 41597–41599) on October 11, 1989, is hereby withdrawn.

List of Subjects in 7 CFR Part 51

Agricultural Commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

Authority: Secs. 203, 205, 60 Stat. 1087 as amended, 1090 as amended: 7 U.S.C. 1622, 1624, unless otherwise noted.

Dated: August 1, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–18426 Filed 8–6–90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-90-20]

Petition for Rulemaking; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: October 9, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 26198, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 31, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for rulemaking

Docket No: 26198.
Petitioner: John Brundage.
Regulations Affected: 14 CFR 61.197.
Description of Petition: To amend § 61.197 to allow a 90-day time period for renewal prior to the expiration date of a flight instructor certificate, when the renewal is done by taking the practical test.
Petitioner's Reason for the Request: The current regulation allows only a 1-month time period for renewal, if the renewal is done by talking the practical test. Taking the practical test early results in a new expiration date that comes less than 24 months after the original expiration date. Scheduling the practical test in the month due may result in expiration of the certificate, if the test is canceled due to weather or other causes and cannot be rescheduled until after the end of the month.

[FR Doc. 90-18392 Filed 8-6-90; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 89-AEA-19]

Proposed Alteration of Transition Area; Petersburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA is proposing to modify the 700 foot Transition Area established at Petersburg, WV, due to the establishment of a new LDA/DME-A Standard Instrument Approach Procedure (SIAP), and the pending decommissioning of the DORCAS Nondirectional Radio Beacon (NDB). The effect of this proposed action would be to realign that amount of controlled airspace which is deemed necessary by the FAA to contain arriving and departing aircraft at the Grant County Airport, Petersburg, WV.

DATES: Comments must be received on or before September 15, 1990.

ADDRESSES: Send comments on the rule in triplicate to: Edward r. Trudeau, Manager, System Management Branch, AEA-530, Docket No. 89-AEA-19, 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 argumenst 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-19". 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 revise the 700 Transition Area at Petersburg, WV, due to the establishment of a new LDA/DME-A SIAP at the Grant County Airport, Petersburg, WV, and the pending decommissioning of the DORCAS NDB. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, safety, transition areas.

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 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:

Petersburg, WV [Revised]

Remove the text in its entirety and replace with the following:

"That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center (lat. 38°59'35"N., long 79°08'32"W.) of the Grant County Airport, Petersburg, WV; within 4 miles each side of the 207° (T) 213° (M) radial of the Kessel, WV, VOR (lat. 39°13'31"N., long. 78°59'23"W.) extending from the VOR to the 6.5-mile radius area; within 4.5 miles each side of a 124° bearing from the airport extending from the 6.5-mile radius area to 17 miles southeast of the airport."

Issued in Jamaica, New York, On July 16, 1990.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 90–18395 Filed 8–6–90; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Rel. No. 33–6872, 34–28291, IC–17633, IA–1244, International Series Release No. 136, File No. S7–11–90]

Request for Comments on Reform of the Regulation of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Extension of time for comment.

SUMMARY: The Securities and Exchange Commission is extending the date by which comments on Investment Company Act Release No. 17534 (June 15, 1990) [55 FR 25322, June 21, 1990] must be submitted from September 4, 1990, until October 10, 1990. The Commission has received two requests to extend the comment period and believes that the extension of time is appropriate, given the complexity of many of the topics under consideration.

DATES: Comments must be received on or before October 10, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–11–90. All comments received will be available for public inspection and copying in the Commission's Public Reference room, 450 5th Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Investment Company Act Release No. 17534, the Commission requested comments on reform of the regulation of investment companies under the federal securities laws. The Investment Company Institute and the American Council of Life Insurance have requested that the comment period in the release be extended. In view of these requests and the complexity of many of the topics under consideration, the Commission has extended the comment period for Investment Company Act Release No. 17534 from September 4, 1990, until October 10, 1990.

FOR FURTHER INFORMATION CONTACT: Matthew A. Chambers, Assistant Director, or Nancy M. Morris, Associate Chief Counsel, at (202) 272–2048.

Dated: August 1, 1990.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–18439 Filed 8–6–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM90–12–000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 31, 1990.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is instituting a seventh annual proceeding concerning generic determination of the rate of return on common equity for public utilities. The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return. In this proceeding, the Commission proposes to determine the growth rate and flotation cost adjustment factors to be used in the quarterly indexing procedure during the year beginning February 1, 1991. The Commission proposes that these benchmark rates of return remain advisory, as were those resulting from the previous six annual proceedings.

DATES: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by September 21, 1990.

ADDRESSES: All filings should refer to Docket No. RM90–12–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Lawrence R. Greenfield, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208–0415.

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 3308 at the Commission's Headquarters, 941 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) 208–1397. 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 notice of proposed rulemaking will be available on CIPS for 10 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 3308, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) institutes a seventh annual proceeding concerning generic determination of the rate of return on common equity for public utilities.[1] The Commission has established a discounted cash flow (DCF) formula to determine the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to calculate benchmark rates of return.[2] In this proceeding, the Commission proposes to determine the growth rate [3] and flotation cost adjustment [4] factors to be used in the quarterly indexing procedure during the 12 months beginning February 1, 1991. The Commission proposes that these benchmark rates of return remain advisory, as were those resulting from the previous six annual proceedings.[5]

[1] The annual proceedings were established by Order No. 389, Generic Determination of Rate of Return on Common Equity for Electric Utilities, 49 FR 29,946 (July 25, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,582 (July 18, 1984), *reh'g denied*, Order No. 289–A, 49 Fed. Reg. 46,351 (Nov. 26, 1984).

[2] *See* Order No. 517, Generic Determination of Rate of Return on Common Equity for Public Utilities, 55 FR 146 (Jan. 3, 1990), III FERC Stats. & Regs. ¶ 30,871 (Dec. 26, 1989). This was the sixth annual proceeding and in it the Commission readopted the DCF formula it has used in the first five annual proceedings.

[3] The growth rate is the expected annual rate of growth of dividends on common stock. The growth rate for the electric utility industry is a factor in the constant growth rate DCF model that the Commission adopted in Order No. 420, *infra* n. 5, to determine the average cost of common equity and to calculate the quarterly benchmark rate of return for public utilities.

[4] Flotation costs include underwriters' compensation and legal and printing fees incurred by utilities when they sell new shares of their common stock. An adjustment for flotation costs is another factor in the formula for calculating the benchmark rate of return.

[5] The first annual proceeding resulted in Orde No. 420, 50 Fed. Reg. 21,802 (May 29, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,644 (May 20, 1985), *reh'g denied*, Order No. 420–A, 50 FR 34,086 (Aug. 23, 1985). The second annual proceeding resulted in Order No. 442, 51 FR 343 (Jan. 6, 1986), III FERC Stats. & Regs. ¶ 30,677 (Dec. 26, 1985), *reh'g*, Order No. 442–A, 51 FR 22,505 (June 20, 1986), III FERC Stats. & Regs. ¶ 30,702 (June 11, 1986). The third annual proceeding resulted in Order No. 461, 52 FR 11 (Jan. 2, 1987), III FERC Stats. & Regs. ¶ 30,722 (Dec. 24, 1986), *reh'g, denied*, Order No. 461–A, 52 FR 5757 (Feb. 26, 1987). The fourth annual proceeding resulted in Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988), *reh'g*, Order No. 489–A, 53 FR 11,991 (Apr. 12, 1988). The fifth annual proceeding resulted in Order No. 510, 53 FR 51,752 (Dec. 23, 1988), III FERC Stats. & Regs. ¶ 30,843 (Dec. 19, 1988). The sixth annual proceeding resulted in Order No. 517, 55 FR 146 (Jan. 3, 1990), III FERC Stats. & Regs. ¶ 30,871 (Dec. 26, 1989). In Order No. 510, the Commission encouraged wider use of the generic rate of return in individual cases, citing several recent cases. *See, e.g.*, Connecticut Light and Power, *et al.*, 43 FERC ¶ 61,508 at 62,264 and 62,267 (June 22, 1988), *reh'g*, 45 FERC ¶ 61,370 (Dec. 6, 1988); Yankee Atomic Electric Co., *et al.*, 40 FERC ¶ 61,372 at 62,210 (Sept. 30, 1987), *reh'g*, 43 FERC ¶ 61,232 (May 6, 1988); Ocean State Power, 44 FERC ¶ 61,261 (Aug. 19, 1988); and Allegheny Generating Co., 44 FERC ¶ 61,436 at 62,380 (Sept 30, 1988).

II. Background

Section 205(a) of the Federal Power Act (FPA) requires that all electric rates subject to the jurisdiction of the Commission be "just and reasonable." [6] In the exercise of this statutory responsibility, the Commission seeks to set rates of return on common equity that are fair to both utility ratepayers and utility stockholders. The allowed rate of return is now determined individually for each utility on a case-by-case basis. In July 1984, the Commission adopted procedures for the generic determination of a benchmark rate of return on common equity and for its applicaton in individual cases.[7] The Commission has conducted six prior annual proceedings to determine the average cost of common equity for the jurisdictional operations of public utilities and has made those rates advisory. In that advisory status, benchmark rates are intended to provide guidance to parties in rate proceedings and to serve as a reference point for the Commission in setting allowed rates of return.

III. Discussion

The Commission has established a discounted cash flow methodology for estimating the rate of return on common equity. Specifically, that formula is:

$$k = (1 + .5g)\, y + g$$

where:

k = market required rate of return on common equity
y = current dividend yield (current annual dividend rate divided by current market price)
g = expected annual dividend growth rate
(1 + .5g) = dividend adjustment factor for quarterly dividend payments

The dividend yield used in this DCF formula is the median of the dividend yields of those companies that remain in a sample of utilities after application of certain screening criteria. The Commission begins with a group of approximately 100 publicly traded electric utilities or combination companies that meet the following standards:

(1) The utility is predominantly electric;

(2) The stock of the utility is traded on either the New York or American Stock Exchange;

(3) The utility is included in the Utility Compustat II data base; and

(4) The utility is not excluded by the Commission based on a case-by-case determination that its data are unavailable or inappropriate.

The Commission excludes companies from the sample if:

(1) The company's common stock is no longer publicly traded due to merger or other action;

(2) The company has decreased or ommitted a common dividend payment in the current or prior three quarters; or

(3) The Commission determines on a case-by-case basis that some other occurrence has caused the dividend yield for that company to be substantially misleading and to bias the resulting quarterly average.

The quarterly dividend yield for each company is computed by dividing the dividend rate by the price. The Dividend rate is the "indicated dividend rate," which is the last declared quarterly dividend multiplied by four. The price used in calculating the quarterly dividend yield is the simple average of the monthly high and low prices for the quarter. The dividend yield used in the quarterly indexing procedure is the average of the two most recent quarterly median yields.

As required by § 37.4 of the Commission's regulations, the Commission is proposing to establish the growth rate and flotation cost adjustment to be used in the quarterly indexing procedure for the 12 months beginning February 1, 1991.

A. Growth Rate

To estimate the expected annual dividend growth rate, the Commission proposes to rely primarily on a fundamental analysis approach as it did in the most recent annual proceeding.[8] In the fundamental analysis approach, the two underlying components of expected annual dividend growth, growth from retention of earnings and growth from sales of new common stock, are evaluated. Growth from retention of earnings, or internal growth, is a function of the expected earned rate of return on common equity (r) and the expected retention ratio (b). Growth from sales of new stock, or external

[6] 16 U.S.C. 824d(a) (1988).

[7] *See* note 1.

[8] *See* Order No. 517, 55 FR 146 (Jan. 3, 1990), III FERC Stats & Regs. ¶ 30,871 (Dec. 26, 1989).

growth, is a function of the growth rate in common equity attributable to sales of common stock (s) and the expected price of those sales relative to book value (v). The formula for estimating the growth rate based on this fundamental analysis is $g = br + sv$.

The Commission also proposes to consider other data and methods for estimating the expected growth rate, including a two-stage growth analysis,[9] but primarily as a check on the reasonableness of its growth rate determination based on the fundamental analysis.

B. Flotation Cost Adjustment

Flotation costs are incurred by utilities when they sell new shares of their common stock and include issuance costs, such as underwriters' compensation and legal and printing fees. Although relatively small, flotation costs are not accounted for elsewhere in a company's cost of service and are therefore included in the calculation of the cost of common equity.

The Commission proposes to continue its existing policy on flotation costs by calculating an industry average adjustment to the required rate of retun on common equity to compensate utilities for issuance costs only.[10] The Commission proposes to estimate the adjustment to the required rate of return on common equity for flotation costs using the following fomula:

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return
f = industry average flotation cost as a percentage of offering price
s = proportion of new common equity expected to be issued annually to total common equity

This formula determines an increment to the cost of common equity which reflects the average annualized amount of flotation costs incurred by the utility industry.

IV. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information concerning the proposals in this notice. All comments in response to this notice should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM90–12–000. An original and fourteen copies should be filed with the Commission on or before September 21, 1990.

Written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room, room 3308, 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[11] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. Nearly all of the jurisdictional utilities which would be affected by the proposed rule are too large to be considered "small entities" within the meaning of the Act.[12] Accordingly, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

Commission regulations require that an environmental assessment or a environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[13] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[14] The Commission has found that matters affecting rates for the purchase or sale of electricity are not major federal actions that have a significant environmental impact.[15] The generic rate of return is a factor to be considered in the determination of electric rates. Thus, no environmental assessment or environmental impact statement is necessary for the requirements of this Notice of Proposed Rulemaking.

VII. Paperwork Reduction Act

The Paperwork Reduction Act[16] and the Office of Management and Budget's (OMB) regulations[17] require that the OMB approve certain information collection requirements imposed by agency rule. The proposed rule in this proceeding does not impose any information collection requirements. Therefore, the Commission is not submitting this rule to the OMB for review or approval.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18355 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Ownership and Control Data; Improvidently Issued Permits

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment defines the term "ownership and control"; details additional requirements concerning the reporting of violations, ownership and control data, and the effect of that information on various permitting decisions; and provides criteria and procedures for the identification and rescission of improvidently issued permits. The proposed amendment also changes the definition of operator. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to clarify and correct inconsistencies in Virginia's rules.

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[9] The two-stage growth analysis involves separate evaluation of near-term and long-term growth expectation.

[10] The Commission adopted this flotation cost policy in Order No. 420 and reaffirmed it in Order Nos. 442, 461, 489, 510 and 517.

[11] 5 U.S.C. 601–612 (1988).

[12] The Act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b) (1988). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 6.32(a) (1988).

[13] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), *codified at* 18 CFR 380.

[14] *Id., codified at* § 380.4.

[15] *Id., codified at* § 380.4(a)(15).

[16] 44 U.S.C. 3301–3520 (1988).

[17] 5 CFR 1320.13 (1989).

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on September 6, 1990. If requested, a public hearing on the proposed amendment will be held on September 3, 1990; requests to present testimony at the hearing must be received on or before 4 p.m. August 22, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed on hand delivered to Mr. W. Russell Campbell, Deputy Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drewer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Deputy Director, Big Stone Gap Field Office, Telephone (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

By letter dated June 29, 1990, (Administrative Record No. VA–752) Virginia submitted a proposed amendment to its program pursuant to SMCRA. The proposed amendment was submitted in response to May 11, 1989, and November 17, 1989, letters from OSM (Administrative Record Nos. VA–726 and VA–743) in accordance with 30 CFR part 732 and in response to a required amendment under 30 CFR 946.16 (55 FR 3738, February 5, 1990). The May 11, 1989, part 732 letter (Administrative Record No. VA–726) requires certain provisions of the State program to be undated for consistency with Federal regulations relating to ownership and control and permit rescission criteria and procedures promulgated through April 28, 1989. One of the deficiencies identified in the November 17, 1989, part 732 letter (Administrative Record No. VA–743) is included in this proposed amendment because of its close relationship to the ownership and control regulations. A brief description of the proposed changes is outlined below.

Virginia proposes to amend: Section 480–03–19.700.5, Definitions; Section 480–03–19.773.15(b)(1), (b)(1)(ii), (b)(2), (b)(3), and (e), Review of Permit Applications; Section 480–03–19.773.17(h), (h)(1), and (h)(2), Permit Conditions; Section 480–03–19.778.13, 778.13(b), (b) (1–3), (c), (c)(1–5), (d), (d)(1), (d)(2), (j), and (k), Identification or Interests; Section 480–03–19.778.14, 778.14(c), (c)(1), and (d), Violation Information; Section 480–03–19.843.11(g), Cessation Orders; and Section 480–03–19.843.13 (Revised Title), Suspension or Revocation of Permits: Pattern of Violations.

Virginia proposes to add: Section 480–03–19.773.20, Improvidently Issued Permits: General Procedures; and Section 480–03–19.773.21, Improvidently Issued Permits: Rescission Procedures.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on August 22, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representative to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the persons listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

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

Dated: July 25,1990.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 90–18429 Filed 8–6–90; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Regulatory Program, Definitions, Sediment Control Structures, Fills, Other Modifications and Corrections

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment contains revisions to the State's Surface Mining Reclamation Regulations (title 38, series 2) which were partially approved by the Secretary of the Interior in the Federal Register on May 23, 1990 (55 FR 21304–21340). The proposed amendment is intended to satisfy seven required amendments at 30 CFR 948.16 relating to the State's definition of downslope, embankment, impoundment and prospecting; the design, construction, maintenance, abandonment, certification and inspection of bench control systems and completely incised sediment control structures; the removal of organic material from the critical foundation areas of excess spoil disposal fills; and the construction of diversion channels to divert run-off from areas adjacent to and above both valley fills constructed with rock core chimney drains and durable rock fills. The proposed amendment also contains approximately sixteen revisions to the State's regulations that were made by the West Virginia Legislature subsequent to the Department of Energy's February 7, 1990, submission which was partially approved on May 23, 1990. In addition, the proposed amendment contains modifications to correct a number of clerical or editorial errors in the State's regulations.

This notice sets forth the times and locations that the West Virginia program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 6, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 27, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 22, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to the Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: West Virginia Administrative Record, 603 Morris Street, Charleston, West Virginia 25301.

Copies of the proposed amendment (Administrative Record No. WV 845), the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the OSM office and the office of the State regulatory authority listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158

West Virginia Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311, Telephone: (304) 348–3500

In addition, copies of the proposed amendment are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, room 229, Morgantown, West Virginia 26505, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 101 Harper Park Drive, Beckley, West Virginia 25801, Telephone: (304) 255–5265

Each requester may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office; Office of Surface Mining Reclamation and Enforcement; 603 Morris Street; Charleston, West Virginia 25301; Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of the approval of the West Virginia program can be found in the January 21, 1981, Federal Register (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.11, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of Proposed Amendment

On May 23, 1990, the Secretary of the Interior announced in the Federal Register his decision to approve, with certain exceptions, West Virginia's Surface Mining Reclamation Regulations as submitted on April 26, 1989 and revised on December 19, 1989 and February 7, 1990 (55 FR 21304–21340). The notice which summarizes the comments received on the State's revised regulations and the Secretary's disposition of those comments was published in the Federal Register on June 12, 1990 (55 FR 23703–23728).

As explained in the May 23, 1990, Federal Register notice, the Secretary found thirty-six provisions in West Virginia's revised regulations to be less effective than the corresponding Federal requirements. Because seven of those provisions could cause immediate environmental and enforcement problems, the Secretary required the State to submit amendments to those provisions by June 29, 1990. The remaining twenty-nine required amendments are to be submitted by April 30, 1991. In addition, the Secretary did not approve twelve specific provisions in the State's revised regulations. Because of that action, none of the disapproved provisions are enforceable by the State.

On June 21, 1990, OSM provided the State copies of the May 23 and June 12, 1990 Federal Register notices (Administrative Record No. WV 844). In addition to submitting the seven required amendments by June 29, 1990, OSM advised the West Virginia Department of Energy that approximately fifteen modifications had been made to its regulations by the West Virginia Legislature subsequent to its February 7, 1990, submission which would also have to be submitted to OSM for approval.

On June 29, 1990, pursuant to 30 CFR 948.16, the West Virginia Department of Energy submitted revisions to its Surface Mining Reclamations Regulations to satisfy seven of the thirty-six inconsistencies identified in its regulations on May 23, 1990 (Administrative Record No. WV 845). The revisions pertain to the State's definitions of downslope, embankment, impoundment and prospecting; the design, construction, maintenance, abandonment, certification and inspection of bench control systems and

completely incised sediment control structures; the removal of organic material from the criticial foundation areas of excess spoil disposal fills; and the construction of diversion channels to divert run-off from areas adjacent to and above both valley fills constructed with rock core chimney drains and durable rock fills.

The Department of Energy also submitted modifications to its regulations relating to applicant violation information, the removal of abandoned coal refuse disposal piles, geologic information, transfer assignment or sale of permit rights, incidental boundary revisions, permit findings and conditions, the final planting report, bond forfeiture sites, the application for small operator assistance, and inspection frequencies. These sixteen modifications were made by the West Virginia Legislature subsequent to the Department of Energy's February 7, 1990, program amendment submission that was partially approved on May 23, 1990.

In addition to the required amendments and the legislative modifications, the Department of Energy revised its regulations to correct a number of clerical or editorial errors concerning the definition of bench control system, maps, the removal of abandoned coal refuse disposal piles, sediment control structures, blasting, liability insurance, prospecting, inactive status, durable rock fills, remining and coal refuse disposal. The Department of Energy also submitted rationale to support alternative proposals relating to spoil disposal involving multiple-seam mining operations in steep slope areas and the construction of diversion channels across excess spoil disposal fills.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on the proposed amendment submitted by the State of West Virginia to its permanent regulatory program. Specifically, OSM is seeking comments on the revisions to the State's Surface Mining Reclamation Regulations that were submitted on June 29, 1990 (Administrative Record No. WV 845). Comments should address whether the proposed revisions are in accordance with SMCRA and no less effective than its implementing regulations. If approved, the amendment will become part of the West Virginia permanent regulatory program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business on August 22, 1990. If no one has requested an opportunity to participate in the hearing by that date, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate remarks and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests to comment at a hearing, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM Charleston Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**".

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made a part of this Administrative Record.

List of Subjects in 30 CFR Part 948

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

Dated: July 27, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90-18428 Filed 8-6-90; 8:45 am]

BILLING CODE 4310-05-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Petition To Reclassify the Grizzly Bear in the North Cascades Area as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioners presented substantial information that reclassifying the grizzly bear in the North Cascades area in Washington from threatened to endangered may be warranted.

DATES: The finding announced in this notice was made in July 1990. Comments and information for the Service's use in issuing its 12-month finding must be received by November 20, 1990.

ADDRESSES: Comments or questions concerning this finding should be sent to Dr. Christropher Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS 312, University of Montana, Missoula, Montana 59812. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen (see "**ADDRESSES**" above) (406/329-3223 or FTS 585-3223).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petition action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species. A status review is initiated herewith, and the Service seeks information until November 20, 1990.

The Service has received and made a 90-day finding on the following petition:

A petition dated March 13, 1990, was received from The Humane Society of the United States, Greater Ecosystem Alliance, North Cascades Audubon Society, Kittitas Audubon Society, Pilchuck Audubon Society, Skagit Alpine Club, North Cascades Conservation Council, and Carol Rae Smith on March 14, 1990. The petition requested the Service to reclassify the grizzly bear (*Ursus arctos horribilis*) in the North Cascades area of Washington State from threatened to endangered.

The petitioners submitted information that there is a very small grizzly bear population remaining in the North Cascades area. They also indicated that a range of threats exist to the survival of the remaining small population of bears from road construction, land management activities, livestock grazing, land development, and inadequate support from management agencies. The petitioners further indicated that the present population of grizzly bears in the North Cascades area may number fewer than 10–20 animals. They also questioned the numbers and genetic viability of the grizzly bear population on the Canadian side of the United States/Canadian border aldjacent to the range of the population in the North Cascades.

After a review of the petition, accompanying documentation, and references cited therein, the Service found the petition presented substantial information that the requested action may be warranted. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted is required by section 4(b)(3)(B) of the Act.

Author

This notice was prepared by Dr. Christopher Servheen (see **ADDRESSES** above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 31, 1990.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–18378 Filed 8–6–90; 8:45 am]

BILLING CODE 4310–SS–M

Notices

Federal Register
Vol. 55, No. 152
Tuesday, August 7, 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

Forest Service

Chenuis Creek/Cayada Mountain Timber Sale, Mt. Baker-Snoqualmie National Forest, Pierce County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a site-specific proposal to harvest and regenerate timber, construct and reconstruct roads, and improve fish habitat and recreation opportunities. The proposed project will be in compliance with the Forest Land and Resource Management Plan, which provides overall guidance for management of the area, including a schedule of proposed activities for the next ten years. The proposed project is located in the Chenuis Creek/Cayada Mountain area on the White River Ranger District and is scheduled in the Forest Plan as a fiscal year 1992 timber sale. The Mt. Baker-Snoqualmie National Forest invites written comments and suggestions on the scope of the analysis.

DATES: Comments concerning the scope of the analysis should be received in writing by September 4, 1990.

ADDRESSES: Send written comments to Ted Lewis, District Ranger, White River Ranger District, 857 Roosevelt Avenue East, Enumclaw, WA 98022.

FOR FURTHER INFORMATION CONTACT: Jim Pena, Timber Management Assistant at the above address or (206) 825–6585.

SUPPLEMENTARY INFORMATION: The proposal includes harvesting timber and constructing/reconstructing roads on one timber sale plus fish habitat improvements and enhancement of dispersed recreation opportunities at Coplay Lake. The area being analyzed is approximately 4,400 acres in size and is adjacent to Mt. Rainier National Park, to the south, and the Clearwater Wilderness, to the north.

The Draft EIS will be tiered to the Final EIS for the Mt. Baker-Snoqualmie National Forest Land and Resource Management Plan (June, 1990). The Forest Land and Resource Management Plan's Management Area direction for this analysis area is approximately 43% MA 1D Roaded Natural Dispersed Recreation; 39% MA 1B Semi-Primitive Nonmotorized Dispersed Recreation; and 18% MA 15A Mountain Goat Habitat Management Requirement. MA 13 (Watershed, Wildlife, and Fisheries Emphasis in Riparian Areas) will be mapped as a part of the project, to meet Forest-wide Standards and Guidelines in the Forest Plan. The proposed project includes a portion of the Clearwater Roadless Area which was considered but not selected for wilderness designation in the 1984 Washington State Wilderness Act. The proposed timber sale is listed in the Timber Program Activity Schedule, appendix A, Land and Resource Management Plan.

The public and Federal, State, and local agencies were invited to participate in early scoping meetings held in November, 1989. Interested parties developed a list of preliminary issues to be addressed and potential alternatives. Further scoping meetings may be scheduled if additional issues are raised.

Preliminary issues identified are timber harvest, retention of old growth, habitat for old growth species, scenery, use of the Chenuis Creek road, water quality, entry into roadless area parcels, and traffic safety on Carbon River road. Preliminary alternatives have been identified; one of these includes no timber harvest (no action). Alternatives for timber harvest will examine clearcutting and partial cutting options, and helicopter logging systems.

The Forest Service is the lead agency. J.D. MacWilliams, Forest Supervisor, Mt. Baker-Snoqualmie National Forest is the responsible official. Your comments and suggestions are encouraged and should be in writing. The draft environmental impact statement is expected to be completed about October, 1990. The final environmental impact statement is scheduled for completion by December, 1990.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1886) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: July 27, 1990.

Bernie Weingardt,

Deputy Forest Supervisor.

[FR Doc. 90–18427 Filed 8–6–90; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda of Public Meeting; New Hampshire Advisory Committee

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 4 p.m. and adjourn at 7 p.m. on August 20, 1990, at the Sheraton-Tara Hotel, Tara Boulevard, Nashua 03062. The purpose of the meeting is (1) To discuss the status of the Commission; (2) hear a report on Civil Rights progress and/or problems in the State; and (3) to plan a project for Fiscal Year 1990.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Helen Bethel (603/434–0494) or Bobby D. Doctor, Commission Staff at (202) 523–5264; TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 30, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–18376 Filed 8–6–90; 8:45 am]

BILLING CODE 6335–01–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: Employment Data of Recipient or Other Party Connected with EDA Assistance.

Form Number: Agency Form ED–525; OMB—0610–0021.

Type of Request: Extension of the expiration date.

Burden: 100 respondents; 400 hours.

Average Hours per Response: 4 hours.

Needs and Uses: To obtain employment data to be analyzed to determine compliance status of recipients or "other parties" connected with EDA projects as required by 15 CFR 8.7.

Affected Public: Recipients or other parties connected with EDA projects.

Frequency: On occasion; nonrecurring unless found in noncompliance.

Respondent's Obligation: Required to obtain or retain a benefit.

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 H6632, 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: August 1, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–18347 Filed 8–6–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection 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 provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Institute of Standards and Technology.

Title: Electromagnetic Compatibility/Interference Impact Survey.

Form Number: N/A.

Type of Request: New Collection.

Burden: 100 respondents; 400 reporting hours.

Needs and Uses:

The Center for Electronics and Electrical Engineering of the National Institute of Standards and Technology (NIST) conducts research in electromagnetic compatibility/interference (EMC/EMI) measurements. The results of this research program are made available to U.S. industry in calibration services, research publications, consultations, and standards activities. For this EMC/EMI program to have maximum economic impact, it must concentrate on the EMC/EMI problems that are most important to U.S. industry, and the results must be disseminated in the most effective manner.

The purpose of this survey is to obtain data and information with which to evaluate and improve the NIST EMC/EMI program. The survey is designed to collect information on the economic impact of cases where the NIST EMC/EMI program has allowed U.S. industry to solve EMC/EMI measurement problems and to make more accurate measurements. Information is also sought on unsolved EMC/EMI problems that should receive future NIST priority.

Affected Public: Businesses, Federal agencies, small businesses.

Frequency: One-time response.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Robert Veeder, 395–3785.

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 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Robert Veeder, OMB Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–18348 Filed 8–6–90; 8:45 am]

BILLING CODE 3510–13–M

Office of the Secretary

[Docket No. 900804–0204]

Public Information; Freedom of Information Central Reference and Records Inspection Facility

AGENCY: Department of Commerce.

ACTION: Notice of Temporary Closing of Central Public Inspection Facility.

The Department's Central Public Inspection Facility will be temporarily closed beginning August 8, 1990. An announcement will be made in the **Federal Register** of the reopening date and new location of the Facility. This action is necessary because of the relocation of the Facility's operating office. During this interval, the public should feel free to consult directly with units that have documents on file in the Facility. Otherwise, direct all questions to Ms. Geraldine P. LeBoo, Departmental Freedom of Information Officer, 202–377–3271.

Dated: August 1, 1990.

Stephen C. Browning,

Director, Office of Management and Organization.

[FR Doc. 90–18413 Filed 8–6–90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-403-801, C-403-802]

Alignment of Final Countervailing Duty and Antidumping Duty Determinations and Postponement of Countervailing Duty Public Hearing: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of the petitioner in these investigations, we are extending the due date for the final determination in the countervailing duty investigation to correspond to the date of the final determination in the antidumping duty investigation of the same product, pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended (the Act) [19 U.S.C. 1671d(a)(1)].

Based upon this request, we are postponing our final determination as to whether producers or exporters of fresh and chilled Atlantic salmon in Norway have received subsidies within the meaning of the countervailing duty law, until not later than December 11, 1990. We are also postponing our public hearing in the countervailing duty investigation until November 7, 1990.

EFFECTIVE DATE: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Rich Herring or Elizabeth Graham, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3530 or 377–4105.

SUPPLEMENTARY INFORMATION: On June 29, 1990, we published a preliminary affirmative countervailing duty determination pertaining to fresh and chilled Atlantic salmon from Norway (55 FR 26727). The notice stated that, if the investigation proceeded normally, we would make our final countervailing duty determination by September 4, 1990.

On June 25, 1990, in accordance with section 705(a)(1) of the Act, we received a request from petitioner to extend the due date for the final countervailing duty determination to correspond to the date of the final antidumping duty determination of the same product. Accordingly, we are granting an extension of the final determination in this investigation from September 4, 1990, to not later than December 11, 1990.

In accordance with section 705 of the Act, and article 5, paragraph 3, of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on October 27, 1990, which is 120 days from the date of publication of the preliminary determination in the countervailing duty investigation. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters on or after October 27, 1990. The suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to hold any entries suspended between June 29, 1990, through October 26, 1990 until the conclusion of these investigations.

Public comment: In our preliminary determination we stated that a public hearing would be held on August 23, 1990. We have rescheduled that public hearing for 10 a.m. on November 7, 1990 at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 705(d) of the Act. This notice is published pursuant to section 750(d) of the Act.

Dated: July 31, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–18416 Filed 8–6–90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Preliminary Scope Ruling; Portable Electric Typewriters From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminary determine that certain later-developed portable electric typewriters (PETs) are within the scope of the antidumpting duty order on PETs from Japan. Specifically, the addition of an LCD, LED or CRT [1] display and expanded and/or removable text memory does not exempt a PET from the antidumping order. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of later-developed portable electric typewriters from Japan.

EFFECTIVE DATES: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Keir Bonine or Melissa G. Skinner, Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5289.

SUPPLEMENTARY INFORMATION:

Criteria

For purposes of determining whether the typewriters in question are within the scope of the antidumping duty order on portable electric typewriters from Japan, the Department will refer to its interim final regulations on scope, published at 19 CFR 353.29 (1990). Because the product descriptions of the merchandise contained in the petition and prior determinations of the Department and the ITC during the original investigation are not dispositive as to whether PWPs are within the scope of the antidumpting duty order, and because the allegations were that the PETs at issue are later-developed products, we considered the criteria listed in § 353.29(h) of the Department's regulations. The regulations provide:

(1) *In general.* For purposes of determining whether a product developed after an antidumping investigation is initiated (hereafter in this paragraph referred to as the "later-developed merchandise") is within the scope of an order, the Secretary will consider whether:

(i) The later-developed product has the same general physical characteristics as the merchandise with respect to which the order was originally issued (hereafter in this paragraph referred to as the "earlier merchandise");

(ii) The expectations of the ultimate purchasers of the later-developed product are the same as for the earlier merchandise;

(iii) The ultimate use of the earlier merchandise and the later-developed product are the same;

(iv) The later-developed product is sold through the same channels of trade as the earlier merchandise; and

(v) The later-developed product is advertised and displayed in a manner similar to the earlier merchandise.

See also Section 781(d) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677j(d) (the Act).

[1] Liquid Crystal Display, Light Emitting Diode and Cathode Ray Tube, respectively.

The Department may not exclude later developed products from an order merely because the products permit the purchaser to perform additional functions, unless such additional functions constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the products. 19 U.S.C. 1677j(d)(2) and 19 CFR 353.29(h)(2).

Documents from the underlying proceeding deemed relevant by the Department to the scope of the outstanding order were made part of the record to the instant scope review. In completing its analysis, the Department considered any written arguments that interested parties submitted within the specified time limits and information obtained from other Government offices and agencies. Documents that were not presented to the Department, or placed by it on the record, will not constitute part of the administrative record attendant to this scope proceeding.

Background

The antidumping duty order on PETs from Japan, published in the **Federal Register** on May 9, 1980 (45 FR 30618), defined the original scope of the order as all typewriters classifiable under Tariff Schedules of the United States Annotated (TSUSA) 676.0510. Following reclassification of some PETs under a different TSUSA number by Customs, the Department issued a scope clarification in *Portable Electric Typewriters From Japan; Clarification of Scope of Antidumping Duty Order and Correction to Early Determination of Antidumping Duties*, published in 46 FR 14006, 14007 (February 25, 1981), which defined "portable electric typewriters" as:

> (A)ll typewriters currently classifiable under TSUSA 676.0510, and some currently classifiable under 676.0540, depending on their individual characteristics * * * The characteristics we will consider include, but are not limited to, the dimensions, weight, presence of a carrying case, the type of market, and method of distribution.

The description of the original TSUSA Item number 676.0510, cited in the original petition, was:

> Typewriters not incorporating a calculating mechanism:
> Non-Automtic with hand-operated keyboard:
> Portable:
> Electric.

TSUSA number 676.0540 reads:

> Typewriters not incorporating a calculating mechanism:
> Non-Automatic with hand-operated keyboard:
> Other:
> Electric

After the conversion to the Harmonized Tariff System, the scope of the order was updated in *Portable Electric Typewriters From Japan Final Results of Antidumping Duty Administrative Review*, published in 53 FR 40926 (October 19, 1988), to be:

> (P)ortable electric typewriters currently classified under Tariff Schedules of the United States Annotated ("TSUSA") item 676.0510, and some currently classifiable under TSUSA item 676.0540, and Harmonized Tariff System item numbers HS 8469.21.00 and 8469.29.00.

In 1983, after reviewing comments from interested parties, the Department found portable electronic typewriters to be of the same class or kind as PETs and therefore to be within the scope of the order. This finding was published in the Department's *Final Results of Administrative Review of Antidumping Duty Order*, 48 FR 7769 (February 24, 1983).

In the Department's final results of the 1981–1982 administrative review, the Department determined that the scope of the order excluded automatic (text memory) typewriters and typewriters with a calculating mechanism. *Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review*, 52 FR 1505 (January 14, 1987). The petitioner sought judicial review of these scope determinations, in *Smith Corona* v. *United States*, CIT Number 87–02–001578. The Court of International Trade (CIT) remanded the case to the Department on December 31, 1987, to reconsider its scope determination and publish a revised determination as to whether PETs incorporating a calculator or text memory are within the scope of the antidumping duty order. On remand, the Department determined that typewriters with calculators are within the scope of the antidumping duty order, but portable electric typewriters with text memory (automatics) were not. The final results of this revised scope determination were submitted to the CIT on March 18, 1988. On September 20, 1988, the Court upheld the Department's determination that portable electric typewriters incorporating a calculating mechanism are within the scope of the order, but reversed the Department's determination that portable electric typewriters with text memory (automatics) are not included in the scope of the order. *See Smith Corona* v. *United States*, 11 CIT 954, 698 F.Supp. 240 (CIT 1988) (*Smith Corona*).

Defendant-intervenors have appealed the CIT's decision to the Court of Appeals for the Federal Circuit (CAFC), which has yet to issue a determination.

On April 13, 1990, the Department sent instructions to Customs (C.I.E. N–57–79), to suspend liquidation on automatic PETs (*i.e.*, PETs with text memory). These instructions specified, however, that Customs is not to suspend liquidation on PETs which contain a drive that accommodates a removable storage medium, such as a floppy disk or an integrated circuit card. *See also Portable Electric Typewriters from Japan; Court of International Trade Decision Concerning the Scope of the Antidumping Duty Order*, 55 FR 12701 (April 5, 1990).

Arguments

Smith Corona

Smith Corona argues that certain later-developed portable typewriters from Japan, including "the latest generation of portable typewriting machines" are within the scope of the PETs antidumping order. "Not only do they operate as do traditional portable typewriters, but they also contain expanded internal memory, removable memory cards or floppy diskettes, and some kind of display." Smith Corona Request of May 15, 1990, p. 1 (S–C Request). Smith Corona continues by saying that "[t]hese additional features enable the user to perform more easily the same word processing features found on the earlier generation of text memory typewriters" (automatics), and that "'all of these features were found on the typewriters considered by the Court of International Trade in *Smith Corona Corp.* v. *United States*,'" 698 F.Supp. 240 (CIT 1988). *Id.*, pp. 1–2.

Smith Corona contends that "[u]nder the holding of the Court of International Trade in *Smith Corona*, the addition of a 'removable storage medium' to a portable electric typewriter, particularly where that device is an 'option' that must be separately purchased, does not suffice to exclude the typewriter from the scope of the antidumping duty order." *Id.*, p. 5. Smith Corona argues that several models introduced as evidence before the Court "incorporated an 'optional 4,000-character memory card'" and one "contained 'an optional 16km (sic) memory card * * *,' and a '160-character (two line) liquid crystal display.' Yet, the Court declined to make any exception for these models, which included a 'removable storage medium, such as a floppy disk (sic) or an integrated circuit card.' Indeed, *ITA's instructions to Customs allow the very machines addressed by the court to escape the reach of the antidumping*

duty order." Id., p. 6 (emphasis Smith Corona's).

Smith Corona states that in *Smith Corona* the Court noted that a comparison of one of the machines with an "optional 4,000-character memory card" to a similar machine by the same manufacturer without the removable storage medium "makes it difficult to conclude that any such pairing physically is substantially (or even less-than-substantially) different." *Id.*, p. 7, quoting *Smith Corona*, 11 CIT 954, 962 n.62, 678 F. Supp. 285 [sic] (1987).

In addition, Smith Corona claims that "with respect to those machines incorporating video displays from 5 to 25 lines, as well as text editing functions and removable storage media, analysis of the factors set forth in 19 U.S.C. 1677j(d)(1), 19 CFR 353.29 and *Diversified Products, infra*, establishes that such machines are within the scope of the antidumping duty order." S–C, p. 5.

Smith Corona goes on to say that "(t)he so-called 'personal word processors' and 'word processing' typewriters are not sufficiently advanced or distinguished in functions and use to be excluded from the class or kind of merchandise subject to the antidumping duty order." *Id.*, p. 8. "(T)he functions that additional memory and larger displays permit are the same functions before the court in *Smith Corona*. These additional functions do not constitute the primary use of the machine, for the same reasons articulated in that case. Nor is the cost of adding an LCD display or removable storage media (either a disk drive or I.C. (integrated circuit) card) 'more than significant proportion of the total cost * * *' " *Id.*, p. 9.

Physical Characteristics

Smith Corona states that the machines in question "generally weigh less than 12 kilograms, eqivalent to 26.4 pounds, which is the threshold set forth in the tariff schedules to define a 'portable' typewriter * * * These machines also have handles and snap-on lids or built-in carrying cases, establishing that the typewriters are intended to be portable." *Id.*, p. 9.

Smith Corona states that "the newly developed 'word processing typewriters' and 'personal word processors' are within the dimensional range already found by ITA to be sufficiently portable to be within the scope of the order," and provides a table listing the comparative dimensions of "Machines already covered" and "New models." *Id.*, p. 11.

As to the machines that are taller and heavier than typewriters previously found to be within the scope of the order, Smith Corona contends that "the additional height of these machines is simply a function of the type of display, CRT versus LCD, chosen by the manufacturer" and that "(t)he added weight, too, is due to the fact than (sic) a CRT is heavier than an LCD display." Smith Corona says that "(t)he overriding feature of these machines, however, is the ability to fold up the keyboard, secure all openings, and easily transport these models from place to place." *Id.*, p. 12.

Smith Corona says that "(t)he word processing capabilities of these machines are enhanced by the addition of external storage devices and video displays" (*Id.*, p. 12), and that "the addition of a larger screen and additional storage capacity correspond to the increasing price of the machines * * * The basic 'word processing' models, already held to be within the scope of the antidumping duty order, can perform the editing tasks that characterize the more expensive machines." *Id.*, p. 15.

Smith Corona states that "(t)hese physical features, however, do not serve to distinguish the machines fundamentally or to change the primary function of the portable machines; all of the machines . . . are capable of operating in the 'pure typewriter mode * * *' " and "(a)s such 'they do not add up to a different class or kind of merchandise.' " *Id.*, p. 15, quoting from *Smith Corona*.

Expectations of the Ultimate Purchasers

Smith Corona says that "(t)he expectations of the ultimate consumers are revealed by the advertisement and marketing of the machines, as well as by the features themselves." Smith Corona continues that "customers often have in mind either at typewriter or a personal computer (PC) before they come into a store" and that "(i)f a customer is looking for a typewriter, the salesman will demonstrate the additional features that can be found on the higher-priced 'word processing' typewriter or 'personal word processor.' " *Id.*, p. 17.

Smith Corona says that the personal word processors are "advertise(d) for 'graduation' and 'back to school,' . . . precisely the selling seasons that have historically characterized the portable electric typewriter market." Also, "the 'word processing' typewriters and 'personal word processors' are sold side-by-side with portable typewriters that do not have optional removable storage media." *Id.*, pp. 17–18. "Moreover, the more sophisticated 'personal word processors' almost uniformly feature the ability to operate in a typewriter 'mode' as a prominent item * * * The manufacturers have made these machines with typewriter modes and functions so that these machines—unlike personal computers—can be used as typewriters as well as word processors." *Id.*, p. 18.

Smith Corona states that the brochures for these machines "stress portability * * * rather than appealing to business customers who would keep the machines in one stationary place in a business office * * * The advertisements also are focused on the nonbusiness user, the person who is fond of typewriters and does not want a complicated machine * * * Furthermore, the moderate prices charged for these word processors is an indication that the companies are aiming their word processor sales at nonbusiness consumers for home and personal use * * *" *Id.*, p. 19.

Smith Corona says that "(t)he subject machines are selling within a price range characteristic of portable electric typewriters." *Id.*, p. 19.

Ultimate Use

Smith Corona says that, in discussing the expectations of the customer, it has "already established that the ultimate use of the subject machines is as a typewriter. Many of the machines labeled 'word processors' by their manufacturers are also advertised as being typewriters or having 'typing functions,' or 'typing modes' " and that "[a] salesman * * * said that the store's word processors 'can also double as typewriters,' " [Parry Affidavit, Exhibit 4]. *Id.*, p. 20.

Smith Corona states that '[t]he word processor has been distinguished from the typewriter, on the basis of 'the size of the system, the special functions, the speed of operation of the microprocessors, the quality of the text display and the cost,' " *Id.*, p. 20, quoting from *Smith Corona*, 698 F.Supp. at 249. Nevertheless, "the court recognized that the 'enhanced' machines at issue were typewriters, not word processors," *Id.*, p. 21. Smith Coronao quotes the Court as saying:

> While the consumer could enhance such a typewriter with a disk drive, keypad attachment, CRT monitor and word processing software, the underlying machine would remain a PET. Indeed, the advertisements, sales displays, brochures, packaging and other manufacturing materials in the record confirm that the merchandise at issue is sold as a typewriter, and not as another product. 698 F. Supp. at 250, as cited in S–C Request, pp. 20–21.

In reference to a Smith Corona personal word processor, "the PWP system (which includes a 3.5" disk, the

external storage media, and 25-line by 80 character CRT)," Smith Corona says that the Court characterized it as "an admirable attempt at turning a typewriter into a 'word processor.' " *Smith Corona*, 698 F.Supp. at 251. Smith Corona goes on to say that "Judge Aquilino reasoned that consumers of such word processors must be most interested in typing functions or else they would purchase an actual computer with more power and functions for nearly the same price." *Id.*, p. 21. Smith Corona again quotes the Court:

> the stronger inference is that *the system's more sophisticated features do not induce its purchase. Rather, its capacity to perform typewriter functions is determinative.* Otherwise, a consumer presumably would purchase that product which would provide the greater text storage and editing capabilities for the money. 698 F. Supp. 251, as cited in S–C Request, p. 21 (emphasis added by Smith Corona).

Channels of Trade

Smith Corona says that "[the channel of trade of possible electric typewriters subject to the antidumping duty order have been mass merchandisers, retail stores, discount houses, department stores, and office equipment suppliers," and that "[the Affidavit of Joellyn M. Parry (Exhibit 4) establishes that the same channels of trade are being used to market the imported word processors." *Id.*, p. 16.

Advertising and Display

Smith Corona states that the advertising and display of PWPs stress portability, ease of use, and typewriter functions ("typewriter mode"). *Id.*, pp. 17–19. The "moderate prices charged for these word processors is an indication that companies are aiming their word processor sales at nonbusiness consumer" and "[o]n the basis of the advertisements and brochures, the subject machines are aimed at consumers, students, housewives and light office users * * *" *Id.*, p. 19.

Respondents

We received comments from the following respondents: Silver Seiko and Silver Reed (Silver Comments of June 25, 1990); Nakajima All Co., Ltd. (Nakajima Comments of June 26, 1990); Matsushita Electric Industrial Co., Ltd., Kyushu Matsushita Electric Co., Ltd., Panasonic Company and Panasonic Communications and Systems Company, divisions of Matsushita Electric Corporation of America (Matsushita Comments of June 25, 1990); Brothers Industries, Ltd., Brother International Corp. (Brother Comments of June 25, 1990); Sears Roebuck and Co. (Sears Comments of June 25, 1990); Canon Inc. and Canon U.S.A., Inc. (Canon Rebuttal Comments of July, 2, 1990).

The respondents contend that the products in question are not PETs and should not be included in the scope of the antidumping duty order. They argue that these machines are personal word processors, distinct from typewriters. Almost uniformly, the respondents accuse Smith Corona of taking "the latest step in a course it began almost the day the antidumping order was issued in this case, a course intended incessantly and irrevocably to expand the scope of the order * * * pushing the outer boundaries of the order just one degree farther out than the previous boundary." Silver, p. 2. *See also* Nakajima, p. 1, Matsushita, p. 4, and Brother, p. 4.

Respondents argue that "the personal word processor evolved not from the typewriter, but from dedicated word processors, which are the offspring of the personal computer and the printer." Brother, p. 10. They state that "there existed at the time of the original investigation a number of typewriters that were used primarily for their text editing capabilities." Silvber, p. 9. These machines included the IBM 6240 Mag Card and Electronic 60 and 75, the Olivetti ET–01 and ET–21, and the QYX 120 and 140. They argue that Smith Corona explicitly excluded such machines in its petition, yet "* * * it is clear that the machines in questions (sic) descend directly from (those just mentioned) * * * rather than from portable electrics." *Id.*, p. 9.

Respondents further argue that "Smith Corona has previously conceded that PWPs are different from PETs covered by the PETs order. * * * (D) during the PETs proceeding and litigation (in *Smith Corona*) involving whether the scope of the PETs Order should include PETs with text memory, Smith Corona *denied* that it was trying to expand the order to encompass word processors. Smith Corona took pains to explain that PETs with text memory (which it claimed were within the order) were different from word processors (which it conceded were not within the order)." Matsushita, p. 5 (Matshushita's emphasis).

Also, respondents argue that by virtue of Smith Corona's scope ruling request describing personal word processors as 'later developed merchandise,' Smith Corona "concedes that PWPs were not described in the (original) petition," not investigated by either the Department or the ITC, and therefore, "PWPs are not within the same 'class or kind of merchandise' included within the PETs order." Nakajima, p. 4 (*see* also Sears, pp. 5–8, Matsushita, pp. 8–10). Rather, respondents argue that "it is widely recognized in the industry that PWPs are alternatives to PCs rather than upgraded versions of typewriters." Matsushita, p. 10.

In reference to the CIT's holding in *Smith Corona*, respondents argue that "(t)he court held *only* that typewriters with minimal word processing capabilities were included within the scope of the order. Although it noted that typewriters with substantial *optional*, add-on memory were included in the order, it went to great lengths to emphasize that its holding was limited to the basic machine before those features were added." Silver, pp. 3–4. Respondents quote the Court as saying that "without such enhancements, *the underlying machine, which is all that is at issue herein*, remains just an 'ordinary (sic) typewriter." Silver, pp. 3–4 (emphasis added by Silver).

Respondents argue that the machines considered by the Court possessed limited word processing capability, "display(ing) *at best* some *two lines* of text" and with memory capacity of "the equivalent of only two or three pages of text," and contained "either no or very little display screen." Silver, p. 4 (quoting the Court in *Smith Corona*, 698 F.Supp. at 250, Silver's emphasis).

Respondents further argue that "(w)hile the CIT found text memory typewriters within the scope of the order, it nonetheless firmly indicated that word processors are a separate and distinct class of merchandise." Nakajima, p. 11. Nakajima quotes the Court as saying:

> The evidence indicates that the "word processing" capabilities of the automatics are not at high enough "levels of sophistication" to support a finding that machines with text memory are in the same class or kind of merchandise as word processors or personal computers.

Nakajima, p. 11 (quoting from *Smith Corona* 698 F.Supp. at 240, 248).

Exclusionary Provisions

In reference to the exclusionary provision in § 353.29(h)(2)(ii) (*i.e.*, products may not be excluded from the scope of an order because of additional functions, unless these functions "constitute the primary use of the products and the cost of the additional functions constitute more than a significant proportion of the total cost of production of the product") respondents argue that both conditions are met by the personal word processors and they should, therefore be excluded.

First, respondents argue that the word processing functions of the products in question constitute their primary function, and the typing capability is ancillary. "The primary capability of a personal word processor for operation in a pure 'typewriter mode' is the additional, not the primary, use. The primary use * * * is to create and edit text, usually in anticipation of printing the final product on paper * * * The ability to draft, modify, and store text is the major reason a person purchases a word processor * * *" Nakajima, p. 13 (*see* also Silver, pp. 6–8).

Second, respondents argue that the word processing hardware (the "additional functions") in the products make up "more than a significant proportion of the total cost of production." Three respondents give specific cost information (proprietary) for the displays and disk drives, two of them comparing these costs to the total cost of production. (For specific, proprietary, cost data, *See* Nakajima, p. 16, Brother, pp. 27–28, Matsushita, p. 25.) (Note: Nakajima's cost data for a screen and disk drive is compared to the retail price of a PWP, which is contrary to the wording of the statute and is, therefore, not relevant. *See* Nakajima, p. 16.)

Physical Characteristics

Respondents argue that "(t)he physical characteristics of a personal word processor are markedly distinct from those of a PET." Nakajima, pp. 20–21. "The major differences in physical characteristics between a personal word processor and a PET are: (1) Size of the text display; (2) hardware for access to external memory, such as a floppy disk drive, for reading and recording text on electronic storage media; and (3) size and configuration." Nakajima, p. 21.

Respondents argue that "[a] PWP is designed to display text so that the user can compose at the keyboard, just as he or she could on a PC with a word processing package." Matsushita, p. 12. PETs "have no display except in the most expensive auomatic models (and, in that case, generally no more than 1 or 2 lines for correction purposes)," but "PWPs incorporate large LCD or CRT screens that display anywhere from 560 to 1600 characters, corresponding to 7–20 lines of text" (Matsushita, p. 12), or from "5 to 25 lines" according to another respondent (Nakajima, p. 21).

Respondents argue that Smith Corona has distinguished the text display capability of a PWP from a PET, quoting Smith Corona as saying that:

> * * * A word processor, by contrast [to a PET], typically incorporates a full- or half page [sic] of video display permitting the user to see the text as it will be printed on the page * * * [A] one-half page video display serves as a powerful tool for editing and correcting text prior to printing.

Nakajima, p. 22 (quoted from Smith Corona's Posthearing Brief of September 9, 1986, p. 20)

For those machines with a cathode ray tube (CRT) screen, the "CRT is the dominant feature of the product, destroying the 'flat box' lines of the normal typewriter and overwhelming the keyboard as a focus of attention." Silver, p. 6.

Respondents also argue that "(s)ince PWPs are designed to process and store extensive amounts of text, they all have *external storage devices* such as floppy diskettes or memory cards. Since the customer can use as many diskettes or cards as he or she pleases, the external memory capacity of the PWP is infinitely expandable * * * By contrast, PETs contain *at most* only an internal memory capacity, which is by definition limited. The Court of International Trade (in *Smith Corona*, 698 F.Supp. at 248) indicated that the typical PET model has a memory capacity 'equivalent to only two or three pages of text.'" Matsushita, pp. 13–14 (Matsushita's emphasis).

Again, respondents claim that Smith Corona has previously distinguished a PWP from a PET, this time due to the external memory features of a PWP; "Most word processors, as distinguished from PETs (sic), typically can write to external storage media, such as disks or floppy diskettes * * *" Nakajima, p. 22 (quoting from Smith Corona's Posthearing Brief of September 9, 1986, p. 19). Respondents continue that, "[i]n support of its contention that a personal word processor's primary use is as a typewriter, Smith Corona describes the external memory cards or diskettes as 'options' that must be purchased separately. Smith Corona Request, p. 13. The argument ignores the relative costs of the diskettes and the floppy disk drive * * * (T)he built in floppy disk drive adds substantial cost to the personal word processor. The diskettes, by contrast, are quite inexpensive, costing just a dollar or two apiece * * *" Nakajima, p. 23 (footnotes omitted).

In addition, respondents argue that PWPs have different keyboards "designed to facilitate text processing" with "many keys not found on PET keyboards," such as cursor keys, "menu" keys and "help" keys. Also, "unlike a PET where the keyboard is integral to a one-piece product, many PWP keyboards are *detached* from the remainder of the machine * * *" Matsushita, p. 13 (Matsushita's emphasis). Many PWPs are also "far larger than PETs" and "simply are not portable" due to their boxy configuration (CRT models). Matsushita, p. 16 (*See* also Nakajima, p. 27.) And, "PWPs have more and vastly different software then PETs in order to perform sophisticated editing and text processing functions." Matsushita, p. 17.

One respondent claims that the Department has previously identified PETs with a computer interface "which allow the machine to be used as a printer when connected to an external memory source, such as a personal computer," as being outside the scope of the order. Nakajima, pp. 8–9 (referring to the Department's *Final Results of Antidumping Administrative Review*, 52 FR 1504, 1505, January 14, 1987).

Expectations of the Ultimate Purchasers

Respondents argue that "(t)he ability to store an unlimited amount of text and to manipulate, process and operate on that text creates a different set of expectations for a PWP than for a PET/PAT (portable automatic typewriter)." Brother, p. 29. "These (word processing) functions establish that a person purchasing a PWP expects a very different machine than a PET. PWPs are for people who prepare and store long documents, or documents wth special pagination, spacing, or footnote needs, (who) wish to compose on the keyboard, need extensive editing functions, and wish to build a library of documents for future use." Matshusita, p. 18. (*See* also Nakajima, pp. 27–31, Brother, pp. 29–30.)

Respondents contend that the Court in *Smith Corona* recognized that " 'a consumer interest primarily in text storage and editing capabilities' " would choose between "a dedicated word processor and a PC, not a PET." Matsushita, p. 19 (quoting from *Smith Corona*, 698 F.Supp. at 249). "The Court * * * recognized that such a person would not buy a PET, which can store typically only a few pages of text, shows only a few lines on its screens, and cannot produce 'long documents with complex formats and revisions.' " Matsushita, p. 19 (quoting from *Smith Corona*, 698 F.Supp. at 248–249).

Respondents argue that "(u)ser surveys which compare PETs to PCs and PWPs corroborate the fundamentally different uses of and consumer expectations for these products." Matsushita, p. 20. Respondents also contend that, "in contradistinction to the legal arguments put forward by its counsel, Smith Corona's marketing head recognizes the distinct expectations and uses prompting the purchase of a PET and a personal word processor."

Nakajima, p. 31 (referring to quotes from Smith Corona's Vice President for Marketing on pp. 30–31 of Nakajima's submission).

In addition, respondents argue that the "price differential (between PETs and PWPs) also makes evident that purchasers have very different expectations for PWPs than PETs; otherwise no one looking for a typewriter would spend hundreds of dollars more for a PWP than for PET." Matsushita, pp. 19–20 (including sample cost information). "The prices of personal word processors are three to four times the price of a basic PET, such as the Smith Corona SL–500. A purchaser who is willing to pay this differential must believe he is getting something significantly more for his money when buying a personal word processor rather than a PET." Nakajima, p. 30.

Ultimate Use

Respondents argue that "[t]he primary use of personal word processors remains that of a word processor," not a typewriter. Nakajima, p. 34 (*See also* Matsushita, pp. 17–21, and Brother, pp. 30–32.) Respondents maintain that "Smith Corona in the past recognized that ultimate use of the personal word processor was distinct from that of PETs":

> In terms of use, word processors (* * *) are clearly intended and actually used for more repetitive and complex tasks than PETS. (* * *) Word processors (* * *) will be identifiable by the capabilities of manipulation and retrieval of unlimited amounts of text stored permanently on external magnetic storage media. (* * *) This use of a word processor clearly distinguishes it from a portable typewriter.

Nakajima, pp. 31–32 (quoting from Smith Corona's Posthearing Brief of September 9, 1986, pp. 21–22).

Channels of Trade

Respondents concede that PWPs and PETs share the same basic channels of trade: "(p)ersonal word processors marketed for students and home use share the same retail channels of trade as other consumer electronic goods, including PETs." Nakajima, p. 34. And, "(a)dmittedly, PWPs, PATs, and PETs are marketed through the same channels of trade * * *" Brother, p. 32. Respondents argue, however, that this is not dispositive, as "many electronic consumer goods, *e.g.*, televisions, VCRs, hand calculators, stereos, and computers, share the same channels of trade." Nakajima, p. 34. (*See also* Matsushita, p. 22, and Sears, p. 17.)

Advertising and Display

With respect to advertising and the manner in which PWPs are displayed, respondents make an argument similar to that concerning channels of trade. That is, PWPs and PETs may sometimes be advertised and displayed in a similar manner, "but many consumer electronic products are advertised together, including PWPs side-by-side with PCs." Matsushita, p. 22. However, "(w)hile personal word processors are often marketed in the same advertisement or in the same section of a store's display, they are clearly labeled as word processors and not typewriters." Nakajima, p. 35. "If channels of trade and advertising displays are dispositive, then this display (in a catalogue store that displayed PWPs beside an electronic music keyboard and pre-recorded video tapes) would suggest that PWPs were the same class or kind of merchandise as musical keyboards and pre-recorded video tapes." Brother, p. 32.

At the same time, respondents argue that PWPs are advertised and marketed as alternatives to PCs rather than to PETs. "In fact, Smith Corona's own advertising proves that PWP manufacturers are looking to reach potential buyers of PCs, not of typewriters." Matsushita, p. 22.

Smith Corona's Rebuttal

In response to respondents' contention "that the merchandise now before the agency (the Department) was deliberately excluded from the underlying antidumping duty order," Smith Corona argues that "(t)he fundamental flaw in (the respondents') arguments * * * is that *portable* machines performing word processing features simply did not exist in 1979." Quoting the ITA, Smith Corona states that "(t)he Department has determined that automatic typewriters were not subject to the investigations because they were not portable." Smith Corona's Rebuttal, p. 8 (Smith Corona's emphasis), (quoting from a First Remand Results at 4, *Smith Corona*, 698 F.Supp. at 245).

Smith Corona also quotes the CIT as stating that "the court cannot overlook the fact that the typewriters in question did not exist in 1980 and therefore could hardly have been 'explicitly excluded' that year from the antidumping order." (Smith Corona's Rebuttal, p. 8 (quoting from *Smith Corona*, 698 F.Supp. at 245). Smith Corona conludes, therefore, that "the key issue is not whether word processors existed in 1980 as large office machines, such a (sic) mag-card units, desk-top machines, such as the Olivetti TES 401, but whether portable electric typewriters in 1980 possessed any of the word processing functions later added." *Id.*, p. 9.

Smith Corona states that "(t)he present request focuses on a new generation of portable typewriters that were not before the agency or the court (in *Smith Corona*) * * *" *Id.*, p. 7. Smith Corona argues that, "(a)lthough counsel for Smith Corona has cited the court's statements on the scope of word processors in *Smith Corona* v. *United States* * * *, it is not this case, but rather * * * § 1677j(d) and the Commerce Department regulations * * * that are the legal basis for the pending scope request * * * [T]he new generation machines covered by this request were not before the ITA in its underlying determinations (in the scope review carried out in 1987) and were not before the court." (Smith Corona notes in a footnote that "(m)achines including removable storage media, such as the Brother CE360 and AX28 and Silver 89SP were before the court * * *") Smith Corona's Rebuttal Comments, p. 6.

Furthermore, Smith Corona argues tht the Department's April 13, 1990, instructions to Customs, limiting the scope of the suspension of liquidation by excluding typewriters with removable storage media, "did not faithfully implement the court's holding" in *Smith Corona*. This is because, says Smith Corona, "(p)rior to the April 13 instruction, neither the court nor the agency (Department) had made any distinction whatsoever between those machines with removable storage media (*e.g.* the Silver 89 SP) and other machines with text memory * * * The court has already held that typewriters such as Silver's model EX34 or 89SP, which contain 4k memory cards, are not sufficiently different from other PETs to escape the purview of the order." *Id.*, p. 12.

In addition, Smith Corona argues that "Brother implicitly agrees" with this conclusion, because "it does not dispute that the AX–28 and CE–380 were included within the scope of the court's holding in *Smith Corona*, but it instead argues that such units are no longer imported." *Id.*, p. 12.

Exclusionary Provisions

In reference to the exclusionary provisions of the later-developed products regulation (§ 353.29(h)(2)), Smith Corona argues that the primary use of personal word processors is not the same as that of computers, as the respondents suggest, but rather, it is the same as that of typewriters. "Unlike personal computers * * *, the so-called

personal word processors are dedicated to word processing. The primary use of these machines is not to enable the user to utilize an unlimited variety of software programs to perform data and word processing. Rather, the primary use of these machines, as has always been the primary use of portable electric typewriters, is to permit typing in a portable package." *Id.*, p. 3.

Smith Corona argues that "although the later developed machines have additional lines of video display and additional memory, their primary use is not for watching the video display or storing materials," but rather "* * * continues to be to provide for typing by means of a hand-operated keyboard and for the printing of typed matter on paper in the manner of a letterpress." *Id.*, p. 14.

Smith Corona asserts that "respondents are unable to show that any of the functions performed by the newly developed machines are different than the functions already addressed by (the Court in) *Smith Corona* * * * (R)espondents are unable to identify any significant functions other than word processing functions, video display, and text memory—all of which are additional features added to a typewriter, but none of which itself constitutes or redefines the primary use of the merchandise." *Id.*, p. 14.

Smith Corona also says that respondents ignore "a substantial and significant primary attribute of the PWP that distinguishes it from a stand-alone word processor. A PWP is *portable*." *Id.*, pp. 14–15 (Smith Corona's emphasis).

Smith Corona argues that "the primary purpose of the portable electric typewriters that existed in 1979 was to 'create and edit text, usually in anticipation of printing the final product on paper.' " *Id.*, p. 15 (quoting an unspecified source). Smith Corona goes on to say that the Court in *Smith Corona* did not distinguish "the portable word processors now before the agency (Department) from the portable 'automatic' typewriters in existence by 1987," but "(t)o the contrary, the court expressly indicated that the Smith Corona PWP system falls into the class or kind of merchandise, portable electric typewriters." *Id.*, p. 15. Smith Corona quotes the Court as saying:

> By way of comparison, as described in the record, the Smith Corona PWP system 'is an admirable attempt at turning a typewriter into a word-processor'. It is claimed to be a 'complete word-processing system' which includes an 'electonic typewriter with spelling dictionary and correction memory' . . . . *Such a claim anticipates that the consumer expects the capabilities of a typewriter, as well as of a word processor.* However, *if typewriter attributes were not of primary interest, there would be little reason to purchase that system*, built as it is around an automatic typewriter, notwithstanding that such a system has some capabilities similar to those of a word processor. . . .
>
> The record indicates that the Smith Corona PWP is available for $599.00, but, at that price 'you could practically but an IBM–PC alone, the nucleus of a far more powerful and versatile system'. Hence, *the stronger inference is that the system's more sophisticated features do not induce its purchase.* Rather, its capacity to perform typewriter functions is determinative.

Id., pp. 15–16 (quoting from *Smith Corona*, 698 F.Supp. at 251) (emphasis Smith Corona's).

In response the Nakajima's and Matsushita's (although not addressing Brother's) cost data indicating that the word processing functions constitute a significant proportion of the cost of their machines, Smith Corona argues first that, "(h)aving failed to establish a different primary usage (than that of a PET), the cost of the additional features is irrelevant under the statute." Smith Corona then argues that "(f)or purposes of comparison * * * these items should be compared with the cost of a PET with a two-line display and 16K or more internal memory" because such machines were already found to be within the scope of the order. "Hence, the addition of more lines to the display and of more storage capacity does not add 'more than significantly' to the cost of production." *Id.*, pp. 18–19.

Physical Characteristics

As to the physical characteristics, Smith Corona argues that the "(r)espondents fail to offer meaningful distinctions between the physical characteristics of the merchandise subject to the order and the later developed merchandise." Smith Corona says: "Suffice it to recall that video displays and external storage were available on machines before the ITA in 1986 and before the Court in *Smith Corona*. The physical characteristics are insufficient *per se* to exclude the later developed merchandise from the order." *Id.*, p. 21.

Also, "the presence of a handle and a snap-on cover establish that the later developed merchandise is intended to be portable." *Id.*, p. 22.

In response to Nakajima's contention that "the addition of a port to permit a portable typewriter to 'interface' with a computer" excludes the machine from the scope of the order, Smith Corona says that the Department has already rejected this argument and that it would not be consistent with the holding in *Smith Corona*. *Id.*, pp. 23–24.

Expectations of Ultimate Purchasers

Smith Corona argues that the survey conducted by Matsushita which purported to demonstrate differing expectations for PWPs and PETs by consumers, is "irrelevant to the statutory inquiry." *Id.*, p. 25. Smith Corona argues that another survey by an independent entity ("New Home"), cited by Matsushita, "suggests that *New Home* does not define a 'word processor' to include the later-developed portable typewriters subject to this request." *Id.*, p. 26, referring to Matsushita, Exhibits I and G.

Channels of Trade

Smith Corona says that "[i]t is uncontradicted that the channels of distribution for the later developed portable typewriters are the same as those for merchandise currently covered by the order." *Id.* p. 27.

Advertisement and Display

Smith Corona states that "PWP's [sic] are advertised and sold in the same manner and at the same price points establish in the original investigation" for PETs. *Id.*, p. 28.

Analysis:

To determine whether PWPs are appropriatedly considered a "later-developed" product and, therefore, require analysis under § 353.29(h), we evaluated the arguments raised by interested parties in light of the language of the statute and the applicable legislative history.

There appears to be a question whether the later-developed products should be compared to the products originally investigated by the Department or to the products ruled by the CIT in 1988 to be within the scope of the antidumping duty order (automatics). (*See* e.g. Smith Corona Request, at pp. 15 and 17). Therefore, in addition to considering whether the products at issue were developed after an antidumping investigation is initiated, the Department has determined that the "later-developed products" under consideration are an advancement or alteration of the product subject to the outstanding order; that is, the later developed products have been compared to the products originally investigated by the Department. The statute indicates that a later-developed product must incorporate technological advances or be alterations of the merchandise on which the order was originally issued (the earlier product). Specificially, § 781 of the Tariff Act of 1930 provides:

(d) *Later-Developed Merchandise.*—

(1) In general—for purposes of determining whether merchandise developed after an investigation is initiated * * * is within the scope of an outstanding antidumping or countervailing duty order * * *, the administrating authority should consider whether—

(A) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued * * *

See also 19 CFR 353.29(h).

The legislative history of 19 U.S.C. 1677j(d) also indicates that the merchandise alleged to be within the scope of the antidumping duty order should be compared with the merchandise originally investigated. The Senate report states:

[T]hat section 781(d) was designed to prevent circumvention of an existing order through the sale of later developed products or of products with minor alterations *that contain features or technologies not in use in the class or kind of merchandise imported into the United States a the time of the original investigation.* (Emphasis added) S. Rep. No. 40., 100th Cong., 1st Sess. 101 (1987).

The Senate amendment is designed to "address the application of outstanding antidumping and countervailing duty orders to merchandise that is essentially the same merchandise subject to an order but was developed after the original investigation was initiated." Sec. 323(a) of Sen. amendment to H.R. 3, October 6, 1987. H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. (1988), *reprinted in* 134 Cong. Rec. H2031, H2035 (daily ed. April 20, 1988).

The language of the statute and legislative history makes clear that for any product to be considered later-developed it must be an advancement of the original product subject to the investigation, as opposed to a product recently found to be within the scope of the order.

While we agree with respondents that there were word processors or automatic typewriters in existence at the time of the original investigation and that Smith Corona did not include such machines in its petition, we do not agree that all "personal word processors" descend directly from the word processors in existence at the time of the original investigation, and therefore, should be excluded from the scope of the order. The fact that portable word processors were not in existence at the time of the original investigation precludes us from making such a determination. Rather, we recognize the evolution of technology in both the typewriter and word processor industries.

Physical Characteristics

We are not persuaded by respondents' assertions that the size and configuration of PWPs represent significant differences in the physical characteristics between PWPs and PETs. Nor are we persuaded by respondents' assertions that the existence of a display, regardless of size, is a meaningful physical distinction between PWPs and PETs. Many automatic PETs already ruled to be within the scope of the order have displays. While we recognize that the existence of hardware for access to external memory, such as a floppy disk drive, for reading and recording text on electronic storage media, is a physical distinction between PWPs and PETs subject to the original investigation, such differences are not so great as to result in PWPs being considered a different class or kind of merchandise.

In an attempt to find a consistent, objective definition of a typewriter, the Department consulted several sources, including the General Service Administration (GSA), Dataquest, Computer and Business Equipment Manufacturers Association, etc. In most instances, each source defined typewriters somewhat differently from the others [2], and from respondents, who had different definitions among themselves as well. *Compare* Matsushita, p. 12, and Nakajima, p. 21. In defining a typewriter, different sources tended to apply different cut-off points when quantifying various physical features, such as the amount of memory capability or the number of lines of display.[3] Because there are no clear guidelines as to the limits of display or memory capability of PETs, we have declined to assign an upper boundary to these features. Instead, we believe it is more appropirate to focus on the criteria listed in the Summary below.

One of the primary physical characteristics of PETs is portability. Because of continuing miniaturization and development of new, light-weight materials, dimension and weight are no longer valid benchmarks for determining portability. Ease of portability, although not dispositive, is more determinative. The existence of a handle and/or carrying case, or similar mechanism to facilitate carrying, is more reflective or portability.

In addition to having an electric power source, other physical characteristics of PETs, and therefore, later-developed PETs, are: the existence of a platen (roller) to accommodate paper or other medium (such as plastic sheets for use in overhead projectors); the existence of a built-in-printer; the existence of a keyboard embedded in the chassis or frame of the machine; and the fact that the machine is comprised of a single intergrated unit. Also, the inability to use other software than that dedicated software already programmed into the machine, *i.e.*,the lack of an operating system, is a determinative characteristic of PET or PWP.[4] These criteria are based on definitions of typewriters used by government agencies, the industry and market research organizations. (*See* Memo to File, dated July 23, 1990, and Memo to File, dated July 24, 1990.) Thus, those PWPs that meet these criteria are, presumptively, of the same class or kind of merchandise as PEPs.

Expectations of the Ultimate Purchasers

We do not agree with respondents' contentions that the unlimited text storage ability and word processing capabilities of PWPs create a different set of expectations in the ultimate purchaser. These capabilities merely offer consumer features in addition to the primary typing function. Because of continuing technological advances, it is impossible to state definitively that the ultimate purchasers of PETs expect only a certain level of word processing capabilities. Therefore, as stated above, the Department has not attempted to limit class or kind based on the number of lines of available display, particular editing capabilities, or the amount of text memory available. Rather, one clearly differing expectation is that the ultimate purchasers of merchandise which is the same class or kind of merchandise as PETs would not expect the typewriters or PWPs to be able to accommodate other proprietary software than that made for the particular machine. In other words, the ultimate purchasers of PC-based word processors expect machines to be programmable, while PWPs are not expected to be programmable.

Respondents contend that a consumer who wished to compose on the keyboard and write long documents would buy a PWP and not a PET, because of the PWP's test-editing capabilities. *See, e.g.*,Brother, pp. 29–30,

[2] *See* Memo to File, dated July 23, 1990, and Memo to File, dated July 24, 1990.

[3] The GSA, for example, defines a typewriter as having no more than 20k (20,000 characters) of internal memory capacity.

[4] This is consistent with the GSA's definition of a typewriter, where, if the machine has an operating system which allows it to use software other than its own dedicated or captive software, it is not a typewriter. *See* Memo to File dated July 23, 1990.

or Nakajima, pp. 28–29. It is indisputable that PWPs have made such activities easier and more efficient. Nonetheless, consumers had the same expectations of PETs before the existence of PWPs. Although more tedious on previous generations of typewriters, many users nevertheless composed on the keyboard and wrote long documents, even without the text-editing capabilities available on today's machines. These same features were available on the automatic PETs found by the CIT to be within the scope of order. *See Smith Corona,* 698 F.Supp. at 248

As Smith Corona has stated, PWPs are sold alongside of portable typewriters that do not have removable storage media. Smith Corona Request, May 15, 1990, pp. 17–18. In addition, the they are selling "within a price range (traditionally) characteristic of portable electric typewriters." *Id.*, p. 19.

Ultimate Use

Respondents argue that a PWP is for work processing, not typing and, therefore, is not a PET. *See, e.g.,* Nakajima, pp. 27–31, 34; Matsushita, pp. 17–21; and Brother, pp. 29–32. However, in our estimation, word processing features merely provide a technological advancement to typing. *See* Smith Corona Rebuttal, p. 15. The ultimate use of a PWP with typing capability is essentially the same as that of a portable electric typewriter; that is, to type text.

Respondents also suggest that the ultimate use of a PWP is more similar to a PC than to a PET. *See,* Matsushita, p. 21; Nakajima, pp. 32–33; and Brother, p. 26. We disagree. There is a major distinction between a PC and PWP. As already mentioned, a PWP within the same class or kind of merchandise, possesses only its own dedicated, captive software. It does not have the capability to use any other software but that with which it has been programmed. PCs, in contrast, can accommodate various amounts of software and can run any number of different proprietary word processing or spreadsheet programs, such as "Word Perfect." Therefore, the ultimate use of a PWP is not the same as that of a PC. It is this distinction between PCs and PWPs that makes the ultimate use of a PWP more like that of a PET.

Channels of Trade

We agree with Smith Corona, that the channels of trade for PWPs and PETs are the same. At the same time, however, we must agree with respondents that such channels of trade are not dispositive in this case, because the usual channels of trade for PETs (mass merchandisers, consumer electronics stores, etc.) are the same for countless other products as well, including PCs.

Advertisement and Display

The advertisement and display, like the channels of trade, appears to be virtually the same for PETs and PWPs. Many unrelated products are advertised and often displayed together with PETs and PWPs (for example, the sample advertisements provided by Smith Corona show Smith Corona typewriters and PWPs in the same ads with cameras, telephones and humidifiers—*See* Smith Corona Rebuttal, Exhibit 3). For this reason, advertisement and display are not dispositive in this inquiry.

Summary

We have developed the following criteria to help determine whether a typewriter/word processor is presumptively within the scope of the PETS antidumping order:

To be of the same class or kind as a PET, a typewriter must

(1) Be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;

(2) Be electric, regardless of source of power;

(3) Be comprised of a single, integrated unit (*e.g.,* not in two or more pieces);

(4) Have a keyboard embedded in the chassis or frame of the machine;

(5) Have a built-in printer;

(6) Have a platen (roller) to accommodate paper;

(7) Only accommodate its own dedicated or captive software.

See Memo to File, dated July 23, 1990, and Memo to File, dated July 24, 1990.

As discussed above, the storage ability and word processing capabilities of later-developed PETs do not create a different set of expectations for the ultimate purchaser. Later-developed PETs still retain the primary function found in the original PETs subject to the antidumping duty investigation and can be used as a traditional typewriter. In other words, PWPs with typing capability retain the same ultimate use as traditional PETs, that is, to type text. Unlike a PC, a PWP can only use its own dedicated, captive software. This limits the functions and use of a PWP. The same channels of trade exist for PETs, PWPs and PCs, as well as other consumer goods; therefore, channels of trade are not dispositive in this scope determination. Similarly, PETs and PWPs are advertised and displayed together with other consumer goods; therefore, advertisement and display are not dispositive in this case.

Smith Corona provided only an illustrative list of models subject to its request. The Department has, in the Appendix, applied the above criteria to models on which it had information available. Interested parties may, for the final determination, submit model-specific information.

Exclusionary Criteria

Respondents argue that PWPs should be exluded from the order on the basis of the "exclusionary criteria" in paragraph (2) of § 353.29(h). *See Criteria,* above. They base this argument on the presumption that the additional word processing functions constitute the primary use of the machine, and constitute more than a significant proportion of the total cost of production of the PWPs. As explained in the above analysis, the Department is not persuaded that the addition of a display, external memory and/or word processing capabilities results in determination that PWPs are not the same class or kind of merchandise as PETs. Rather, our analysis has led us to conclude that word processing functions are merely enhancements to typing functions, therefore functions are merely enhancements to typing functions, therefore it follows that the word processing functions on word processing typewriters are not the primary functions.

Significant Technological Advance

Having determined that certain PWPs are later-developed products within the scope of the antidumping order, we then considered whether the products in question represent a significant technological advancement or alteration to the original product. As stated in the beginning of this analysis, the Department is required to consult with the ITC if the later-developed product in question "incorporates a significant technological advance or significant alteration of an earlier product." *See § 353.29)d)(7)(iii).*

Over the ten-year life of the antidumping duty order on portable electric typewriters, significant technological advancements have occurred in both electric typewriters and word processors. While, in some cases, manufacturers of word processors have incorporated features such as portability

into their products, manufacturers of portable electric typewriters have, at the same time, incorporated word processing functions into typewriters. The current technological advancements incorporated into PETs may, in some cases, be based on features available on word processors at the time of the original investigation.

Nevertheless, this does not mean that PETs with these additional features are, therefore, outside the scope of the antidumping duty order, or that they are not technological advancements of the PETs covered in the original order. Therefore, we determine PWPs represent a significant technological advance to, and significant alteration of the portable electric typewriters subject to the petition and original investigations by the Department and the Commission.

Conclusion

In this preliminary scope ruling, the Department has not attempted to establish a bright line test, as some of the respondents have suggested, such as a maximum number of lines of display or a particular type of memory, for a machine to be considered a PET. Rather, we have developed the above criteria to provide a presumptive, but not dispositive, guide to determine whether certain PWPs are of the same class or kind of merchandise as PETs. We invite interested parties to comment on this preliminary determination, and to address the above criteria within 30 days of publication of this preliminary determination. *See* 19 CFR 353.29(d)(3). Because we have preliminarily determined that certain later-developed products are within the same class or kind of merchandise as PETs and incorporate a significant technological advance or significant alteration of an earlier product, we have notified the ITC pursuant to section 781(e) of the Act.

Finally, as noted in the Background section, the Court of Appeals for the Federal Circuit currently has under consideration the CIT's opinion that automatic typewriters are included within the scope of the antidumping duty order. The Department's scope decision will be subject to the CAFC's decision.

The preliminary scope ruling is in accordance with section 781(d) of the Tariff Act (19 U.S.C. 1677j(d)).

Dated: July 27, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

Appendix

The interested parties to the instant scope inquiry did not ask for a product-specific determination and therefore did not provide an all-inclusive listing of merchandise subject to this inquiry. Rather, they indicated that the listings provided merely represented an illustrative list of products subject to pending request. Based on model-specific information provided, the Department, therefore, provides this Appendix as an example of the application of the generic criteria, established in this preliminary ruling, for determining whether later-developed typewriters are presumptively within the class or kind of merchandise subject to the antidumping duty order on Portable Electric Typewriters from Japan.

Models Not Meeting the Criteria and Therefore, Outside the Class or Kind:

Panasonic KX-WL50.	No built-in printer.
Panasonic KX-W1500.	Keyboard not embedded in the chassis or frame of the machine.
Panasonic KX-W1510.	Not easily portable.
Panasonic KX-W1550.	Not comprised of a single, integrated unit.
Brother WP-75.	Keyboard not embedded in the chassis or frame of the machine.
Brother WP-80.	Keyboard not embedded in the chassis or frame of the machine.
Brother WP-90.	Keyboard not embedded in the chassis or frame of the machine.
Brother WP-95.	Not comprised of a single, integrated unit.
Brother WP-500.	Keyboard not embedded in the chassis or frame of the machine.
Brother WP-650.	Keyboard not embedded in the chassis or frame of the machine.
Brother WP-660.	Keyboard not embedded in the chassis or frame of the machine.
Brother OPUS WP-510.	Keyboard not embedded in the chassis or frame of the machine.

Models Meeting All of the Criteria and Therefore, Presumptively Within the Class or Kind

Panasonic KX-W900
Panasonic KX-W1025
Brother WP-4U
Brother WP-60
Brother WP-65
Brother WP-720
Brother WP-1400D
Brother WP-760D

[FR Doc. 90-18349 Filed 8-6-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-805]

Initiation of Antidumping Duty Investigation; Certain Sulfur Chemicals From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of sodium metabisulfite and sodium thiosulfate (certain sulfur chemicals) from the People's Republic of China (the PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certain sulfur chemicals from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 23, 1990. If that determination is affirmative, we will make our preliminary determination on or before December 17, 1990.

EFFECTIVE DATE: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Jim Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-4103 or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION: .

The Petition

On July 9, 1990, we received a petition filed in proper form by the Calabrian Corporation, on behalf of the United States industry producing certain sulfur chemicals. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1990)), petitioner alleges that imports of certain sulfur chemicals from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because

it has filed the petition on behalf of the U.S. Industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) is based on confirmed price quotes by chemical importers/brokers to petitioner's current or former customers, as well as its own purchase of the subject merchandise from Sinochem. Petitioner deducted, where appropriate, U.S. movement expenses to the importer's customer to obtain an FOB port price. From this FOB price, petitioner deducted the broker mark-up, if applicable, Customs duties, ocean transportation and insurance, foreign and U.S. brokerage charges, and miscellaneous expenses including U.S. Customs duty users' fees, handling expenses, any applicable port fees, and bank fees. In addition, foreign freight expenses were deducted.

Petitioner alleges that the PRC is a nonmarket economy country within the meaning of section 773(c) of the Act. Accordingly, petitioner based foreign market value (FMV) on constructed value (CV). Constructed value was calculated using petitioner's manufacturing costs adjusted for known differences in manufacturing costs in a country at a stage of economic development comparable to the PRC (i.e., India). To calculate an estimated CV for the subject merchandise, petitioner first increased raw material costs for sulfur dioxide, an input for the subject merchandise. Petitioner asserts that this was done to reflect the cost savings it realizes as a result of a patented and licensed process which petitioner claims is unavailable to its foreign competitors. According to petitioner, the other raw materials are commodities which are sold at similar prices worldwide. As such, no adjustments to other raw material costs were made. Petitioner reduced direct labor costs to account for lower labor costs in India. Its source for Indian labor rates was the Department of Labor, Bureau of Labor Statistics. No adjustments were made for fixed or variable overhead costs, as petitioner did not have information as to differences between U.S. and Indian costs. Petitioner added the statutory minimums of ten percent for general, selling and administrative expenses, and eight percent for profit, in accordance with section 773(e)(1)(B) of the Act. Petitioner also added an amount for U.S. packing and adjusted for imputed credit expenses.

Based on a comparison of USP and FMV, petitioner alleges dumping margins ranging from 25.57 percent to 123.83 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of certain sulfur chemicals from the PRC.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on certain sulfur chemicals from the PRC and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain sulfur chemicals from the PRC are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 17, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international Harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The sulfur chemicals subject to this investigation are all grades of sodium metabisulfite and sodium thiosulfate, in dry or liquid form, used primarly to dechlorinate industrial and municipal waste water. The chemical compositions of sodium metabisulfite and sodium thiosulfate are $Na_2S_2O_5$ and $Na_2S_2O_3$, respectively. All other sulfur chemicals are excluded from this investigation.

Sodium metabisulfite and sodium thiosulfate are currently provided for under the following HTS subheadings: 2832.10.0000 and 2832.30.1000, respectively.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 23, 1990, whether there is a reasonable indication that imports of certain sulfur chemicals from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 30, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

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[A-412-805]

Initiation of Antidumping Duty Investigation: Certain Sulfur Chemicals from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of sodium metabisulfite and sodium thiosulfate (certain sulfur chemicals) from the United Kingdom (the U.K.) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certain sulfur chemicals from the U.K. are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 23, 1990. If that determination is affirmative, we will make our preliminary determination on or before December 17, 1990.

EFFECTIVE DATE: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Jim Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administraton, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–4103 or (202) 377–8830, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On July 9, 1990, we received a petition filed in proper form by the Calabrian Corporation, on behalf of the United States industry producing certain sulfur chemicals. In compliance wth the filing requirements of the Department's regulations (19 CFR 353.12 (1990)), petitioner alleges that imports of certain sulfur chemicals from the U.K. are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) is based on confirmed price quotes by chemical importers/brokers to petitoner's current or former customers. Petitioner deducted, where appropriate, U.S. movement expenses to the importers customer to obtain an FOB port price. From this FOB price, petitioner deducted the broker mark-up, Customs duties, ocean transportation and insurance, foreign and U.S. brokerage charges, and miscellaneous expenses including U.S. Customs duty users' fees, handling expenses, any applicable port fees, and bank fees. In addition, foreign freight expenses were deducted.

Petitioner's estimate of foreign market value (FMV) for sodium metabisulfite and one physical form of sodium thiosulfate is based on ex-works prices to distributors. To adjust FMV, petitioner added additional packing costs and adjusted for imputed credit.

Petitioner's estimate of FMV for another physical form of sodium thiosulfate is based on constructed value (CV), as petitioner was unable to obtain reliable home market or third country pricing information. Constructed value was based on petitioner's manufacturing costs, adjusted for known differences in U.K. production costs. To calculate an estimated CV for the subject merchandise, petitioner first increased raw material costs for sulfur dioxide, an input for the subject merchandise. This was done to reflect the cost savings it realizes as a result of a patented and licensed process which petitioner claims is unavailable to its foreign competitors. According to petitioner, the other raw materials are commodities which are sold at similar prices worldwide. As such, no adjustments were made to other raw materials. Petitioner reduced direct labor costs to account for lower labor costs in the U.K. Its source for U.K. labor rates was the Department of Labor, Bureau of Labor Statistics. No adjustments were made for fixed or variable overhead costs, as petitioner did not have information as to differences between U.S.and U.K. costs. Petitioner added the statutory minimums of ten percent for general, selling and administrative expenses, and eight percent for profit, in accordance with section 773(e)(1)(B) of the Act. Petitioner also added an amount for U.S. packing and adjusted for imputed credit expenses.

Based on a comparison of USP and FMV, petitioner alleges dumping margins ranging from 29.10 percent to 65.49 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of certain sulfur chemicals from the U.K.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on certain sulfur chemicals from the U.K. and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain sulfur chemicals from the U.K. are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make or preliminary determination by December 17, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The sulfur chemicals subject to this investigation are all grades of sodium metabisulfite and sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial and municipal waste water. The chemical compositions

of sodium metabisulfite and sodium thiosulfate are $Na_2S_2O_5$ and $Na_2S_2O_3$, respectively. All other sulfur chemicals are excluded from this investigation.

Sodium metabisulfite and sodium thiosulfate are currently provided for under the following HTS subheadings: 2832.10.0000 and 2832.30.,1000, respectively.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determinaton by ITC

The ITC will determine by August 23, 1990, whether there is a reasonable indication that imports of certain sulfur chemicals from the U.K. are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 30, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-18352 Filed 8-6-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-807]

Initiation of Antidumping Duty Investigation; Certain Sulfur Chemicals from the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping investigation to determine whether imports of sodium metabisulfite and sodium thiosulfate (certain sulfur chemicals) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certian chemicals from the FRG are materially injuring, or threaten material unjury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 23, 1990. If that determination is affirmative, we will make our preliminary determination on or before December 17, 1990.

EFFECTIVE DATE: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Jim Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4103 or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On July 9, 1990, we received a petition filed in proper form by the Calabrian Corporation, on behalf of the United States industry producing certain sulfur chemicals. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1990)), petitioner alleges that imports of certain sulfur chemicals from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on both purchase price (PP) and exporter's sales price (ESP). Petitioner based PP on confirmed price quotes by chemical importers/brokers to petitioner's current and former customers and to firms whose business petitioner actively competed for in 1989 and 1990. Petitioner deducted, where appropriate, U.S. movement expenses to the importer's customer to obtain an FOB port price. From this FOB price, petitioner deducted the broker mark-up, Customs duties, ocean transportation and insurance, foreign and U.S. brokerage charges, and miscellaneous expenses including U.S. Customs duty users' fees, handling expenses, any applicable port fees, and bank fees. In addition, foreign freight expenses were deducted.

For ESP sales, petitioner obtained several confirmed sales or offers for sale to its current or former customers as well as a price quote from BASF Corporation's Chicago warehouse. From the confirmed FOB sales prices, petitioner deducted U.S. freight expenses and input credit expenses to arrive at an ex-factory price for the subject merchandise. We disallowed petitioner's ten percent deduction for general, selling and administrative expenses in the United States as section 772(e)(2) of the Act only allows for the deduction of selling expenses from ESP. For the warehouse price quote, an additional deduction was made for a distributor discount. This deduction was not made on the confirmed sale, as it was already reflected in the price paid by the unrelated distributor. The following deductions were then made from the FOB port price: Customs duties, ocean freight and insurance, U.S. and foreign brokerage, Customs users' fees, port charges, handling fees, bank charges and inland freight. Petitioner also deducted imputed credit expenses to account for inventory carrying costs from the time of shipment from the manufacturer in the FRG to the time of delivery by the BASF subsidiary.

Petitioner's estimate of foreign market value (FMV) is based on ex-works prices to distributors. When PP was used for price comparisons, petitioner adjusted for imput credit costs. When ESP was used for price comparisons, petitioner deducted imputed credit costs. In its less than fair value allegation, when USP was based on ESP, petitioner made an additional deduction from FMV for indirect selling expenses. We disallowed this deduction because

no indirect selling expenses were reported or deducted from ESP.

We compared USP to FMV based on information provided in the petition, adjusted for indirect selling expenses, as described above. Accordingly, we found margins ranging from 52.15 percent to 100.40 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of certain sulfur chemicals from the FRG.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on certain sulfur chemicals from the FRG and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certain sulfur chemicals from the FRG are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 17, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The sulfur chemicals subject to this investigation are all grades of sodium metabisulfite and sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial and municipal waste water. The chemical compositions of sodium metabisulfite and sodium thiosulfate are $Na_2S_2O_5$ and $Na_2S_2O_3$, respectively. All other sulfur chemicals are excluded from this investigation.

Sodium metabisulfite and sodium thiosulfate are currently provided for under the following HTS subheadings: 2832.10.0000 and 2832.30.1000, respectively.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protection order without the written consent of the Deputy Assistant Secretary for Investigations, Import Adminisistration.

Preliminary Determination by ITC

The ITC will determine by August 23, 1990, whether there is a reasonable indication that imports of certain sulfur chemicals from the FRG are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed accordingly to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 30, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-18353 Filed 8-6-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-489-801]

Initiation of Antidumping Duty Investigation; Certain Sulfur Chemicals from Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of sodium metabisulfite and sodium thiosulfate (certain sulfur chemicals) from Turkey are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of certain sulfur chemicals from Turkey are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 23, 1990. If that determination is affirmative, we will make our preliminary determination on or before December 17, 1990.

EFFECTIVE DATE: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Jim Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4103 or (202) 377-8830, respectively.

SUPPLEMENTARY INFORMATION: .

The Petition

On July 9, 1990, we received a petition filed in proper form by the Calabrian Corporation, on behalf of the United States industry producing certain sulfur chemicals. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12 (1990)), Petitioner alleges that imports of certain sulfur chemicals from Turkey are being, or are likely be be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in section 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner's estimate of United States Price (USP) is based on confirmed price quotes by chemical importers/brokers to petitioner's current or former customers. Petitioner deducted U.S. freight costs, if the terms of sale included delivery in the sales price, to obtain an FOB port price. No deduction was made if the terms of sale were FOB port. From this FOB price, petitioner deducted the broker mark-up, ocean transportation and insurance, foreign and U.S. brokerage charges, and miscellaneous expenses including U.S. Customs duty users' fees, handling expenses, any applicable port fees, and bank fees. In addition, foreign freight expenses were deducted.

Petitioner was unable to obtain reliable home market or third country pricing information. Petitioner therefore based its estimate of Turkish foreign market value (FMV) on the constructed value (CV) of the Turkish merchandise, using petitioner's manufacturing costs, adjusted for known differences in Turkish production costs. To calculate an estimated CV for the subject merchandise, petitioner increased raw material costs for sulfur dioxide, an input for the subject merchandise. This was done to reflect the cost savings it realizes as a result of a patented and licensed process which petitioner claims is unavailable to its foreign competitors. According to petitioner, the other raw materials are commodities which are sold at similar prices worldwide. As such, no adjustment to other raw material costs were made. Petitioner reduced direct labor costs to account for lower labor costs in Turkey. Its source for Turkish labor rates was the Department of Labor, Bureau of Labor Statistics. No adjustments were made for fixed or variable overhead costs, as petitioner did not have information as to differences between U.S. and Turkish costs. Petitioner added the statutory minimums of ten percent for general, selling and administrative expenses, and eight percent for profit, in accordance with section 773(e)(1)(B) of the Act. Petitioner also added an amount for U.S. packing and adjusted for imputed credit expenses.

Based on a comparison of USP and FMV, petitioner alleges dumping margins ranging from 35.10 percent to 84.12 percent.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of certain sulfur chemicals from Turkey.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on certain sulfur chemicals from Turkey and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of certin sulfur chemicals from Turkey are being, or are likely to be, sold in the United States at less than fair value. We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination by December 17, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

The sulfur chemicals subject to this investigation are all grades of sodium metabisulfite and sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial and municipal waste water. The chemical compositions of sodium metabisulfite and sodium thiosulfate are $Na_2S_2O_5$, and $Na_2S_2O_3$, respectively. All other sulfur chemicals are excluded from this investigation.

Sodium metabisulfite and sodium thiosulfate are currently provided for under the following HTS subheadings: 2832.10.0000 and 2832.30.1000, respectively.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 23, 1990, whether there is a reasonable indication that imports of certain sulfur chemicals from Turkey are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 30, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-18351 Filed 8-6-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-009]

Certain Iron-Metal Construction Castings from Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on certain iron-metal construction castings from Mexico. Because the U.S. castings industry is not interested in having the United States Trade Representative refer this case to the International Trade Commission and, consequently, is not interested in maintaining the countervailing duty order, we intent to revoke the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On March 2, 1983, The Department of Commerce (the Department) published in the Federal Register (48 FR 8834) a notice of final affirmative countervailing duty determination and countervailing duty order on certain iron-metal construction casting from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was and remains duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade (GATT). Consistent with our earlier positions in *Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order* (46 FR 44129; October 6, 1982) and *Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Counervailing Duty Order* (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended (the Tariff Act), to levey countervailing duties on duty-free imports from Mexico entered on or after August 24, 1986 absent a determination regarding injury to the domestic industry.

In order to fulfill our international obligations, we have developed procedures whereby the U.S. International Trade Commission (ITC) will, at the request of the United States Trade Representative (USTR), conduct an investigation pursuant to section 332 of the Tariff Act to asses whether (1) an industry in the United Staes would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would b materially retarded, if the Department were to revoke the outstanding countervailing duty order on certain iron-metal construction castings from Mexico.

On May 4, 1990, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTRA requesting an investigation pursuant to section 332 on duty-free imports of certain iron-metal construction castings from Mexico, we requested that the interested domestic parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statment of interest, we would initiate procedures to revoke the countervailing duty order on certain iron-metal construction castings from Mexico. We received no response.

Scope of Review

Imports covered by this review are shipments of certain iron-metal construction castings from Mexico (castings), including manhole covers, rings and frames, cleanout covers and grates, meter boxes and valve boxes. These castings are commonly called municipal or public works castings. Through 1988, such merchandise was classifiable under items 657.0950, 657.0990, 657.2540, and 657.2550 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classificable under item numbers 7325.10.0010 and 7325.10.0050 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke

We have determined that changed circumstances exist sufficient to warrant initiation of changed circumstances reviw. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on certain iron-metal construction castings from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administration review.

Thus, we preliminarily determine that there is a reasonably basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intent to revoke the countervailing duty order on certain iron-metal construction castings from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effective until publication of the final results of this review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice and submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 10 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any case or rebuttal brief or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.22 (h)(1) and (h)(4) and 355.25 (d)(1), (d)(2), and (d)(3).

Dated: July 31, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–18415 Filed 8–6–90; 8:45 am]

BILLING CODE 3510-DS-M

[C–489–802]

Initiation of Countervailing Duty Investigation: Certain Sulfur Chemicals From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether

producers or exporters in Turkey of sodium metabisulfite and sodium thiosulfate ("certain sulfur chemicals"), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of certain sulfur chemicals from Turkey are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, we will make our preliminary determination on or before October 2, 1990.

EFFECTIVE DATE: August 7, 1990

FOR FURTHER INFORMATION CONTACT: Elizabeth Graham or Larry Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4105 and (202) 377–0114.

SUPPLEMENTARY INFORMATION:

The Petition

On July 9, 1990, we received a petition in proper form from The Calabrian Corporation, filed on behalf of the U.S. industry producing certain sulfur chemicals. In compliance with the filing requirements of § 355.12 of the Department's Regulations (19 CFR 355.12) (1990), the petition alleges that producers and exporters of certain sulfur chemicals in Turkey receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Petitioner also alleges that "critical circumstances" exist within the meaning of section 703(e) of the Act, with respect to imports of certain sulfur chemicals from Turkey.

Since Turkey is a "country under the Agreement" within the meaning of section 701(b) of the Act, title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, the U.S. industry.

Petitioner has alleged that it has standing to file the petition. Specifically, petitioner has alleged that it is an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support of or opposition to this petition, please file written notification with the Commerce officials cited in the "**FOR FURTHER INFORMATION CONTACT**" section of this notice.

Initiation of Investigation

Under section 702(c) of the Act, we must determine whether to initiate a countervailing duty proceeding within 20 days after a petition is filed. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. The Department has examined the petition on certain sulfur chemicals from Turkey and has found that most of the programs alleged in the petition meet these requirements. Therefore, we are initiating a contervailing duty investigation to determine whether Turkey producers or exporters of certain sulfur chemicals receive subsidies. However, we are not initiating an investigation on three programs: one that the Department in a previous investigation found to be terminated, one that has been terminated and one that did not meet the requirements under 701(a). We will also make a determination as to whether critical circumstances exist with respect to the subject merchandise. If our investigation proceeds normally, we will make our preliminary determination on or before October 2, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS item number(s). The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The sulfur chemicals subject to this investigation are all grades of sodium metabisulfite and sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial and municipal waste water. The chemical compositions of sodium metabisulfite and sodium thiosulfate are $Na_2S_2O_5$ and $Na_2S_2O_3$, respectively. All other sulfur chemicals are excluded from this investigation.

Sodium metabisulfite and sodium thiosulfate are currently provided for under the following HTS subheadings: 2832.10.0000 and 2832.30.1000, respectively.

Allegations of Subsidies

Petitioner lists a number of practices by the Government of Turkey which allegedly confer subsidies on producers or exporters of certain sulfur chemicals. We are initiating an investigation of the following program:

- *Deduction from Taxable Income for Export Revenues*
- *Export Credits*
- *General Incentives Program*
- Employee Tax Exemption
- Investment Financing Fund
- Building, Construction Licensing Charge Immunity
- Tax, Duty and Charge Exemptions
- Foreign Exchange Allocation
- Deferment of Value-Added Tax
- Incentive Premium on Domestically Obtained Goods
- Wharfage Exemption
- Interest Rebates on Export Financing
- Exemption from Taxes, Duties and Surcharges on Credits
- Exemptions from Custom Duties
- Investment Allowance
- *Partial Reimbursement for Investment Under the Resource Utilization Support Fund*
- *Deduction of Foreign Exchange Corresponding to Export*
- Export Premium

We are not initiating an investigation on the programs listed below. Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations. For the programs listed below, the petition did not meet the requirements of section 702(b) of the Act.

1. *Resource Utilization Support Fund (RUSF)* Direct payments provided under RUSF were found to be terminated in *Final Affirmative Countervailing Duty Determination: Acetylsalicylic Acid (Aspirin) from Turkey* (52 FR 24495, July 1, 1987). Absent the provision of new evidence, or an allegation of changed circumstances, we have no basis upon which to re-initiate an investigation of the provision of direct payments under this program.

2. *Export and Supplemental Tax Rebate Program* According to information available to the Department, this program was terminated pursuant to Turkish Decree 88/13351 as of January 1, 1989.

3. *Duty-Free Imports Corresponding to Export Value* Under this program, exporters are allowed to import raw materials, auxiliary materials, and packing materials to be incorporated into goods for export without the payment of customs duties. The Department does not consider to be a countervailable subsidy the non-excessive drawback, rebate, or remission of customs duties on imported goods physically incorporated into a final product. *See Final Affirmative Countervailing Duty Determination: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 53 FR 1268, 1271 (January 10, 1988). Because petitioner did not allege that the exemption from duties is excessive or is provided on products which are not physically incorporated into the exported product, we are not initiating an investigation of this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-proprietary information. We will also allow the ITC access to all privileged and business proprietary information in our files, provided it confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 23, 1990, whether there is a reasonable indication that imports of certain sulfur chemicals materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, this investigation will continue according to the statutory procedures. This notice is published pursuant to section 702(c)(2) of the Act.

Dated: July 30, 1990.

Eric Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-18354 Filed 8-6-90; 8:45 am]

BILLING CODE 3570-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

August 1, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the commissioner of Customs increasing limits.

EFFECTIVE DATE: August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Appeal, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 347/348 and 369-S are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52047, published on December 20, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 1, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 14, 1989, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the period January 1, 1990 through December 31, 1990.

Effective on August 1, 1990 you are directed to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted 12-month limit [1]
Levels not in a group:	
347/348	2,303,326 dozen
369-S [2]	620,766 kilograms

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

[2] Category 369-S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall with the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-18414 Filed 8-6-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

July 27, 1990.

The USAF Scientific Advisory Board Ad Hoc Committee on Science and Technology (S&T) Broad Program Appraisal (BPA) will meet on September 19, 1990 from 8 a.m. to 5 p.m. at the Pentagon, Washington, DC 20330-5430.

The purpose of the meeting is to develop the Committee's observations and comments on the Air Force S&T programs and present them to the Air Force Acquisition Executive (AFAE) to assist him in his decisions to approve/disapprove the Technology Area Plans (TAPs) and the Technology Investment Plans (TIPs) submitted for the management of these programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–18323 Filed 8–6–90; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Intention to Negotiate a Grant With the State of Idaho

AGENCY: Department of Energy.

ACTION: Intent to negotiate a grant with the State of Idaho, Boise, ID.

SUMMARY:

Environmental Oversight and Monitoring Agreement

The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a grant for approximately $10,900,000 with the State of Idaho, Boise, ID. This grant will carry the activity through September 30, 1994. This action is authorized by 42 U.S.C. 7101 *et seq.* The Secretary of Energy announced a Ten Point Plan designed to chart a new course for the DOE toward full accountability in the areas of environmental protection and public health and safety. Idaho has been invited to participate in negotiations leading to the execution of a formal agreement between Idaho and DOE. The objective of the agreement is to assure the citizens of Idaho that health, safety and the environment are being protected through DOE actions and a vigorous program of independent monitoring and oversight by the State. The agreement provides the State with the means to assume a more substantive role in overseeing DOE's Compliance with State environmental laws and to help it to assure the citizens of Idaho that DOE operations do not constitute a health hazard. The authority and justification for determination of noncompetitive financial assistance is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (C). The applicant is a unit of governmnent and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The work definitely meets the intent of the Secretary's Ten Point Plan and addresses a public need (assuring that DOE operations do not constitute a health hazard). Public response may be addressed to the contract specialist below.

CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Marshall Garr, Contract Specialist (208) 526–1536.

Dated: July 27, 1990.

R. Jeffrey Hoyles,

Director Contracts Management Division.

[FR Doc. 90–18445 Filed 8–6–90; 8:45 am]

BILLING CODE 6450-01-M

Floodplain/Wetlands Involvement Notification for the Clean Coal Technology Project Proposed at Seward Station, Unit No. 15, Seward PA

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: Under the Clean Coal Technology Program, DOE proposes to fund, in part, a project entitled "Demonstration of Confined Zone Dispersion (CZD) Flue Gas Desulfurization at Pennsylvania Electric Company Seward Station Boiler No. 15, Seward, Pennsylvania." Pursuant to 10 CFR part 1022 (DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements"), DOE has determined that this action would involve activities within a floodplain/wetlands and, therefore, the following notice is submitted for public review and comment.

In accordance with DOE regulations for compliance with floodplain/wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetlands assessment for this proposed action Maps and further information are available from DOE at the address shown below.

DATES: Any comments are due on or before August 22, 1990.

ADDRESSES: Address comments or requests to the Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236. All comments should refer to the project title.

FOR FURTHER INFORMATION CONTACT: Dr. Earl Evans, Environmental Project Manager, Pittsburgh Energy Technology Center, Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236, (412) 892–6709.

SUPPLEMENTARY INFORMATION: The proposed project is a field evaluation of the effectiveness of a process referred to as confined zone dispersion (CZD) for controlling SO_2 and NO_x emissions from a coal-fired boiler. The evaluation will be conducted at Pennsylvania Electric Company, Seward Station. Seward Station includes three (3) coal-fired steam generating electric units with a total net generating capacity of 199 megawatts (MW). The project will be conducted in Unit Number 15, a 137 MW boiler.

Seward Station is a 125-acre facility located 1,085 feet above mean sea level in a fairly flat area of the Conemaugh River Valley in the Township of East Wheatfield, Indiana County, approximately 12 miles northwest of Johnstown, Pennsylvania, and about 100 miles east of Pittsburgh. According to Flood Insurance Rate Maps, which were recently completed for the Township of East Wheatfield, the Seward Station lies in the 100-year floodplain of the Conemaugh River.

The demonstration project at Seward Station will involve a minor amount of construction in the floodway fringe. All construction will take place in the immediate vicinity of the boiler. Ten steel columns will be built to support the addition of a longer flue gas duct, 32 feet above ground level. Installation of the duct will allow for the increased removal of SO_2 and NO_x from the products of combustion and will, therefore, result in decreased emissions of both pollutants. Each of the ten steel columns would be anchored to a 3-foot by 3-foot concrete foundation that is flush with the ground level. These foundations would be in the floodway fringe of the 100-year floodplain and, therefore, the effects of this action on the floodplain/wetlands shall be considered, as required by Executive Orders 11988 and 11990.

Lime sorbent sprayed into the longer flue gas duct will b removed by the existing particulate equipment. This sorbent material would be combined with the existing bottom ash, and other solid wastes products from Seward Station, and disposed of at an off-site permitted disposal facility. The additional solid waste generated by the CZD project, during the 1-year demonstration, would require Seward Station to increase disposal truck traffic approximately 1 percent.

The development floodsay profile, when compared to the original floodway profile of the Flood Insurance Study for the Township of East Wheatfield, indicates an allowable increase of 0.5 feet of the base flood water surface elevation near the station. Construction and installation activities in the floodway fringe of the Conemaugh River's 100-year floodplain are expected to have little, if any effect on the floodway surface elevations. The foundations and columns would not be constructed or installed in or near

wetlands and, thus, would have no effect on wetlands.

Signed in Washington, DC., this 1st day of August, 1990, for the United States Department of Energy.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 90-18448 Filed 8-6-90; 8:45 am]

BILLING CODE 6450-01-M

Floodplain/Wetlands Involvement for the Proposed Clean Coal Technology Project at City Water Light & Power, Lakeside Station, Unit 4, Springfield, IL

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: Under the Clean Coal Technology Program, DOE proposes to fund, in part, the construction and operation of a project entitled "Combustion Engineering Integrated Gasification Combined Cycle (IGCC) Repowering Project." Pursuant to 10 CFR part 1022 (DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements"), DOE has determined that this action would involve activities within a designated floodplain/wetlands and, therefore, the following notice is submitted for public review and comment.

In accordance with DOE regulations for compliance with floodplain/wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetland assessment for this proposal. The floodplain/wetland assessment will be incorporated into the environmental assessment to be prepared for this proposed action. Maps and further information are available from DOE at the address shown below.

DATES: Any comments are due on or before August 22, 1990.

ADDRESSES: Address comments to the Morgantown Energy Technology Center, Department of Energy, P.O. Box 880, Morgantown, WV 26507.

All comments should refer to the project title.

FOR FURTHER INFORMATION CONTACT: Ms. Wennona Brown, Environmental Protection Specialist, Morgantown Energy Technology Center, Department of Energy, P.O. Box 880, Morgantown, WV 26507, (304) 291-4294.

SUPPLEMENTARY INFORMATION: The proposed project is a field demonstration and evaluation of the effectiveness of a pressurized, air-fed, entrained-flow coal gasification repowering technology. Synthetic gas produced by this process will be cleaned of sulfur and particulates and burned in a new 40-MW gas turbine to which a heat-recovery steam system will be added. Steam from the gasification process and heat-recovery system will be used to repower an existing 20-MW steam turbine (Unit 4) at the City Water, Light and Power, Lakeside Generating Station.

Lakeside Station and the adjacent Dallman Station occupy a 75-acre site on the northwest shore of Lake Springfield in Sangamon County, Illinois. Coal combustion and flue gas cleaning wastes from the project will be transported to an existing on-site waste disposal area located immediately north of Lake Springfield. This disposal area includes three ash ponds for wet disposal of fly ash and bottom ash from the two stations, two lime softening ponds, a clarification pond, and three dry landfill cells for disposal of dewatered flue gas desulfurization sludge from Dallman Station. The existing ash ponds will receive slag from the project gasifier. The flood zone map from the Federal Emergency Management Agency for the Lakeside Station area shows that the power station is not located within the floodplain. However, the waste disposal area is located within the 100-year floodplain of Sugar Creek, i.e., an area with a one percent chance of being flooded in any one year. The waste disposal ponds and landfill cells are diked to a level 8 to 10 feet above the 100-year flood level.

The power station area does not contain wetlands. However, information obtained from the U.S. Fish and Wildlife Service (FWS) indicates that the existing disposal ponds and dry landfill cells contain wetlands areas. The ash ponds contain wetlands that are classified as lacustrine littoral unconsolidated shore seasonal diked/impounded wetlands and lacustrine limnetic unconsolidated bottom permanent diked/impounded wetlands by the FWS wetlands classification procedure.

The Illinois Department of Conservation, which compiled the wetlands map for the U.S. Fish and Wildlife Service, indicates that the ash pond and landfill wetlands are so identified because they contain standing water, and not because they support aquatic life. The ponds and landfill cells were excavated for the purpose of waste disposal, and did not contain standing water or support aquatic life prior to excavation.

Project construction will involve retrofit to the existing power plant. All construction will take place on the grounds of the existing power station. Once the equipment has been installed, the IGCC demonstration and evaluation project will operate for a period of 4 to 5 years.

The only project activity with the potential to impact the floodplain or wetland areas is use of the existing ash ponds. While operating, the gasifier would generate 9,900 pounds per hour of a glassy granular coal slag. The chemical composition of the slag is unknown, but is not expected to differ significantly from the ash currently stored in the ponds. The slag will be analyzed and tested for toxicity before storage in the ponds. The slag is expected to be somewhat less leachable than the ash currently stored in the ponds because of greater vitrification. Leachate from the ponds is monitored in accordance with requirements of the Illinois Environmental Protection Agency, and is currently determined to be nonhazardous. The operator currently sells ash from these ponds and expects to sell the slag from the project, thereby avoiding the need for additional disposal facilities. If the wastes are not sold, the project will shorten the useful life of the ash ponds by 32% and create a need for new waste disposal facilities within 5 years. Since the ash is expected to be sold, there are no plans for additional facilities at the present time.

Issued in Washington, DC, this 26th day of July, 1990.

Robert H. Gentile,

Assistant Secretary, Fossil Energy.

[FR Doc. 90-18447 Filed 8-6-90; 8:45 am]

BILLING CODE 6450-01-M

San Francisco Operations Office; Trespassing on DOE Property

AGENCY: Department of Energy.

ACTION: Amendment of legal description of San Francisco Operations Office.

SUMMARY: The Notice concerning unauthorized entry into and upon the Department of Energy San Francisco Operations Office appearing in the Federal Register on Wednesday, September 1, 1982, pages 38579-38580 (47 FR 38579-38580) is hereby amended in its entirety to redefine the legal description of the San Francisco Operations Office as an Off-Limits Area in accordance with 10 CFR part 860, making it a Federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon the San Francisco Operations Office.

FOR FURTHER INFORMATION CONTACT: Michael O'Brien, (415) 273-7693.

Notice

Pursuant to section 229 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2278a), section 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814), as implemented by 10 CFR part 860 published in the Federal Register on July 9, 1975 (40 FR 28789–28790), and section 301 of the Department of Energy Organization Act (42 U.S.C. 7151), the Department of Energy hereby gives notice that the San Francisco Operations Office is designated an Off-Limits Area and prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.3 and 860.4 into or upon the San Francisco Operations Office of the Department of Energy. The San Francisco Office consists of the following specifically described areas in the structure commonly known as the Wells Fargo Building, located at 1333 Broadway, Oakland, in Alameda County, State of California.

Basement level: 3,697 net usable feet of space located within a room in the north corner of the basement level of the Wells Fargo Building. The room is bounded by interior walls with a U.S.D.O.E. sign affixed to the entrance door.

4th Floor: 6,437 net usable square feet of space located in the southeast side of the fourth floor of the Wells Fargo Building. The side of the floor is bounded by interior walls with a U.S.D.O.E. sign affixed to the entrance door to room 450, room 470 and room 480.

5th Floor: 19,688 net usable square feet of space encompassing the entire fifth floor of the Wells Fargo Building.

6th Floor: 19,688 net usable square feet of space encompassing the entire sixth floor of the Wells Fargo Building.

7th Floor: 12,122 net usable square feet of space located in the southeast side of the seventh floor of the Wells Fargo Building. The side of the floor is bounded by interior walls with a U.S.D.O.E. sign affixed to the entrance door to room 750.

Notice stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said areas and at intervals along its perimeters as provided in 10 CFR 860.6.

Issued in Washington, DC, this 6th day of July 1990.

Donald F. Knuth,

Acting Deputy Assistant Secretary for Operations, Defense Programs.

[FR Doc. 90–18444 Filed 8–6–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP90–1788–000 et al.]

Tennessee Gas Pipeline Co., et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Co.

[Docket No. CP90–1788–000]

July 30, 1990.

Take notice that on July 23, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–1788–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service on behalf of Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to abandon a transportation service which Tennessee was performing for Alabama-Tennessee pursuant to an agreement dated October 1, 1979, and filed as Rate Schedule T–89 in Tennessee's FERC Gas Tariff Original Volume No. 2. It is stated that the transportation service was authorized by the Commission in Docket Nos. CP78–491 and CP78–491–002. It is explained that Tennessee was authorized to transport, on a best efforts basis, up to 13,000 Mcf of natural gas per day for Alabama-Tennessee from an interconnection with Alabama-Tennessee's facilities near Tennessee's mainline in Forrest County, Mississippi, to Tennessee's Barton Sales Meter Station for deliveries to Alabama-Tennessee in Colbert County, Alabama. It is asserted that Tennessee is requesting abandonment authorization in response to Alabama-Tennessee's request, reflecting the expiration of the primary term on October 31, 1988. It is further asserted that there would be no impact on customers other than Alabama-Tennessee, which requested the termination. It is explained that no facilities would be abandoned in connection with the abandonment of the transportation service.

Comment date: August 20, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP90–1816–000]

July 30, 1990.

Take notice that on July 26, 1990, Northern Natural Gas Company, Division of Enron Corporation (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–1816–000 a request pursuant to §§ 157.205 and 184–223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of Adobe/Midland Joint Venture (Shipper) under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states it proposes to transport for Shipper 200,000 MMbtu on a peak day, 175,000 MMbtu on an average day and 73,000 MMbtu on an annual basis. Northern also states that pursuant to a Transportation Agreement dated May 25, 1990 between Northern and Shipper (Transportation Agreement) proposes to transport natural gas for Shipper from points of receipt located in Kansas and Texas and the delivery points located in Texas.

Northern further states that it commenced their service, as reported in Docket No. ST90–3513–000.

Comment date: September 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Co. of America

[Docket No. CP90–1815–000]

July 30, 1990.

Take notice that on July 26, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90–1815–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Coastal Gas Marketing Company (Coastal) under the blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that pursuant to a Transportation Agreement dated May 16, 1990, it proposes to transport on an interruptible basis, up to a maximum of 200,000 MMBtu, plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS for Coastal. The receipt points are located in Illinois, Indiana, Kentucky, Louisiana, Offshore Louisiana, Texas, Offshore Texas, Arkansas, Oklahoma, Kansas, New Mexcio, Colorado, Wyoming, Utah, Nebraska, Montana, North Dakota, and

South Dakota and the delivery points are located in Oklahoma, Louisiana, Offshore Louisiana, Texas, Offshore Texas, Iowa, Colorado, Illinois, New Mexico, Kansas, Arkansas and Missouri.

Natural also states that it will transport approximately 75,000 MMBtu on an average day and approximately 27,375,000 MMbtu on an annual basis.

Natural further states that it commenced this service on May 24, 1990, as reported in Docket No. ST90–3540–000.

Comment date: September 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP90–1817–000, CP90–1818–000, CP90–1819–000, CP90–1820–000, CP90–1821–000]

July 30, 1990.

Take notice that Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251–1642, (Trunkline), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Trunkline and is summarized in the attached appendix.

Comment date: September 13, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual Mcf	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90–1817–000 (7–26–90)	Semco Energy Services, Inc. (Marketer).	380 380 138,700	OLA, IL, LA, TN, TX, OTX	IN	6–1–90 PT Firm	ST90–3687–000, 6–1–90.
CP90–1818–000 7–26–90	BP Gas, Inc. (Marketer)	50,000 50,000 18,250,000	OLA	LA	11–1–89 PT, Interruptible.	ST90–3502–000, 6–1–90.
CP90–1819–000 7–26–90	Entrade Corporation (Marketer).	100,000 55,000 36,500,000	IL, LA, TN, OLA, OTX, TX	LA	1–8–90 PT, Interruptible.	ST90–3499–000, 6–1–90.
CP90–1820–000 7–26–90	Amerada Hess Corporation (Producer).	32,000 15,000 8,577,500	OLA	LA	5–22–90 PT, Interruptible.	ST90–3500–000, 6–1–90.
CP90–1821–000 7–26–90	Coastal Gas Marketing Company (Marketer).	100,000 10,000 3,650,000	IL, LA, TN, TX, IN	IL	3–29–90 PT, Interruptible.	ST90–3501–000. 6–1–90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Williams Natural Gas Co.; Colorado Interstate Gas Co.; Texas Eastern Transmission Corp.; Equitrans, Inc; Southern Natural Gas Co.

[Docket No. CP90–1813–000; [2] Docket No. CP90–1814–000; Docket No. CP90–1822–000; Docket No. CP90–1823–000; Docket No. CP90–1824–000; Docket No. CP90–1825–000; Docket No. CP90–1827–000]

July 31, 1990.

Take notice that on July 25, 1990, and July 26, 1990, Applicants filed in the above reference dockets, prior notice requests to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the Applicants' address, the identify of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: September 14, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90–1813–000 (7–25–90)	Williams Natural Gas Company, P.O. Box 3288, Tulsa, OK 74101.	Centel Corporation.	30,000Dth 30,000Dth 10,950,000Dth	Various Existing Points.	Various Existing Points.	6–9–90 ITS	CP86–631–000, ST90–3800–000.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related dockets [2]
				Receipt	Delivery		
CP90-1814-000 (7-25-90)	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs CO 80944.	Enron Gas Marketing, Inc..	50,000Mcf 10,000Mcf 3,650,000Mcf	TX, WY	TX	5-9-90 IT-1	CP86-589-000, ST90-3097-000.
CP90-1822-000 (7-26-90)	Texas Eastern Transmission Corporation, P.O. Box 5221, Houston, TX 77252-2521.	General Motors Corporation.	4,000 4,000 1,460,000	Various Existing Points.	NJ, NY, PA	6-1-90 IT-1	CP88-136-000, ST90-3506-000.
CP90-1823-000 (7-26-90)	Equitrans, Inc. 3500 Park Lane, Pittsburgh, PA 15275.	USS, a division of USX Corp..	51,205 6,452 967,775	PA, WV	PA	6-1-90 ITS	CP86-533-000, ST90-3269-000.
CP90-1824-000 (7-26-90)	Equitrans, Inc. 3500 Park Lane, Pittsburgh, PA 15275.	Latrobe Steel	8,193 2,048 747,593	PA, WV	PA	6-8-90, ITS	CP86-533-000, ST90-3628-000.
CP90-1825-000 (7-26-90)	Equitrans, Inc. 3500 Park Lane, Pittsburgh, PA 15275.	Bethlehem Steel Corporation.	15,362 1,536 560,695	PA, WV	PA	6-11-90, ITS	CP86-533-000, ST90-3627-000.
CP90-1827-000 (7-26-90)	Southern Natural Gas Company, P.O. Box 2563, Birmingham, AL 35202-2563.	ABC Rail Corporation.	5,000 1,800 657,000	Offshore TX & LA; TX, LA MI, GA and AL.	AL	5-31-90, IT	CP88-316-000, ST90-3641-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rule.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-18356 Filed 8-6-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-107-004]

Columbia Gulf Transmission Co., Proposed Changes in FERC Gas Tariff

August 1, 1990

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on July 30, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1990:

Second Substitute First Revised Sheet No. 072
Substitute Original Sheet No. 078
Substitute First Revised Sheet No. 079
Substitute First Revised Sheet No. 080
Substitute Original Sheet No. 081
Substitute Original Sheet No. 082
Substitute First Revised Sheet No. 091
Second Substitute First Revised Sheet No. 148
Substitute Original Sheet No. 154
Substitute First Revised Sheet No. 155
Substitute First Revised Sheet No. 156
Substitute Original Sheet No. 157
Substitute Original Sheet No. 158
Substitute First Revised Sheet No. 164

Columbia Gulf states that the foregoing is being filed in compliance with the Commission's May 31, 1990, suspension order, as modified by its July 13, 1990 order on rehearing, and the letter order issued by the Director of OPPR on July 11, 1990 in the captioned proceedings. Columbia Gulf states that the filing complies with Ordering Paragraph (D)(7) of the suspension order, as modified by the order on rehearing and the letter order, which requires Columbia Gulf to file, within

fifteen days from the issuance of the order on rehearing, certain tariff revisions concerning prepayment of reservation charges in connection with requests for firm transportation service. In addition, the filing removes provisions from Columbia Gulf's FTS–1 and FTS–2 Rate Schedules, which would have provided for interruptible delivery points in firm transportation arrangements.

Columbia Gulf states that copies of the filing were served upon the parties to the proceeding, Columbia Gulf's jurisdictional customers and interested state regulatory commissions.

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, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. all such motions or protests should be filed on or before August 8, 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 already parties to this proceeding need not file a motion to intervene in this matter. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18360 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TF90–6–23–000 and TM90–3–23–000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 1, 1990

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on July 27, 1990, certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective May 1, 1990, June 1, 1990, and August 1, 1990, respectively.

ESNG states that such tariff sheets are being filed pursuant to § 154.309 of the Commission's regulations and Section 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect decreases in ESNG's jurisdictional rates. Such decreases are due to reductions in ESNG's projected average cost of gas purchased from that reflected in its quarterly PGA filing in Docket No. TQ90–3–23–000, effective August 1, 1990 as filed with the Commission on June 29, 1990. Such reductions in ESNG's projected cost of gas are the result of lower spot gas prices.

ESNG states that the impact of this adjustment is a decrease of $.3343 per dt in the commodity rate charge under ESNG's various rate schedules as compared to its quarterly PGA filing in Docket No. TQ90–3–23–000, effective August 1, 1990.

ESNG is also filing herein revised rates under its Rate Schedule LSS to track changes in the rates ESNG is charged under Transcontinental Gas Pipe Line Corporation's (Transco) Rate Schedule LSS. ESNG purchases such storage service from Transco. This tracking change is being made pursuant to section 24 of the General Terms and Conditions of ESNG's FERC Gas Tariff.

ESNG is further filing hereto to: (1) Correct the billing amounts shown on Fifth Revised Sheet No. 6B as previously filed and accepted by the Commission to be effective May 1, 1990 and (2) file a new Sixth Revised Sheet No. 6B proposed to be effective on June 1, 1990, as explained in more detail in the filing.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

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 rule 211 and rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before August 8, 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. 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. 90–18361 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–15–001]

Mid Louisiana Gas Co.; Proposed Correction of Rates

August 1, 1990.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 30, 1990, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective September 1, 1990:

	Superseding
Substitute Seventy-Fourth Revised Sheet No. 3a.	Seventy-Fourth Revised Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of Substitute Seventy-Fourth Revised Sheet No. 3a is to reflect the correction of errors contained in its original filing and a revised Positive Surcharge of $0.3007 per Mcf.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Mid Louisiana states that copies of the filing has been mailed to Mid Louisiana'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 (1989). All such protests should be filed on or before August 8, 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. 90–18362 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR87–62–006]

Pacific Gas Transmission Co.

August 1, 1990.

Take notice that on July 30, 1990, Pacific Gas Transmission Company (PGT) tendered for filling and acceptance certain tariff sheets to be included in First Revised Volume No. 1, Substitute First Revised Volume No. 1, and Original Volume No. 1–A of its FERC Gas Tariff.

The above tariff sheets have been revised to reflect certain modifications in accordance with the Commission's order of June 28, 1990 in this docket.

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 (1989). All such protests should be filed on or before August 8, 1990. Protests with 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. 90–18363 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–155–000]

Panhandle Eastern Pipe Line Co.; Proposed One-Time Limited Term Waiver

August 1, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing on July 30, 1990, a request for a one-time limited term waiver of the provisions of Rate Schedule PT-Firm of its FERC Gas Tariff Original Volume No. 1, and any applicable Commission Regulations as may be necessary to permit persons with valid, unfulfilled requests for firm transportation service on Panhandle to updated those requests without losing their original priority dates. Panhandle proposes that the waiver period commence on August 1, 1990, and continue for thirty (30) days.

Panhandle states that a copy of this filing has been mailed to its jurisdictional customers and to each shipper in the firm transportation queue.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 9, 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. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18364 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–5–38–000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

August 1, 1990.

TAke notice that on July 30, 1990, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed a Second Revised Sheet No. 4C to its FERC Gas Tariff and FERC Form No. 542–PGA pursuant to 18 CFR 154.308.

Ringwood states that copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Ringwood's Out-of-Cycle Quarterly PGA filing reflects an estimated $1.6824 per Mcf cost of gas, a current adjustment of $.1746 per Mcf; a cumulative credit adjustment of ($.2425) per Mcf; a surcharge adjustment of zero per Mcf and a total sales rate of $2.0544 per Mcf.

Ringwood's filing requests the surcharge adjustment be reduced to zero effective July 1, 1990 citing expedited recoveries made due to increased sales volumes to Williams Natural Gas Company.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 8, 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. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18365 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–5–7–000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

August 1, 1990.

Take notice that on July 30, 1990, Southern Natural Gas Company (Southern) tendered for filing the following revised sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, with a proposed effective date of August 1, 1990:

Sixth Revised Sheet No. 4B.01
Sixth Revised Sheet No. 4B.02
Sixth Revised Sheet No. 4B.03

Southern states that the above-referenced tariff sheets have been filed to flow through an additional $4.3 million in take-or-pay buy-out and buy-down charges made to it by its upstream pipeline suppliers. United Gas Pipe Line Company and Sea Robin Pepeline Company, pursuant to the terms of the Stipulation and Agreement in Docket No. RP83–58–000, *et al.*

Southern states that copies of Southern's filing were served upon all of Southern's jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such petitions or protests should be filed on or before August 8, 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. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18366 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP89–225–008 and TA90–1–8–002]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

August 1, 1990.

Take notice that on July 30, 1990, South Georgia Natural Gas Company

(South Georgia) tendered for filing First Substitute Sixty-Third Revised Sheet No. 4 and First Substitute Sixty-Fourth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. The tariff sheets were filed with a proposed effective date of July 1, 1990.

South Georgia states that First Substitute Sixty-Third Revised Sheet No. 4 and First Substitute Sixty-Fourth Revised Sheet No. 4 are submitted in compliance with the Commission's order of June 29, 1990 in Docket Nos. RP89–225–000 and TA90–1–8–000 (June 29 Order). The June 29 Order directed South Georgia to refile its tariff sheet within thirty (30) days of the issuance of the order together with additional data with respect to electronic filings, refunds and supporting schedules. South Georgia states that consistent with the June 29 Order, First Substitute Sixty-Third Revised Sheet No. 4 represents the rates reflected in Southern Natural Gas Company's interim purchased gas cost adjustments (PGA) filing of April 27, 1990 in Docket No. TF90–3–7–000. First Substitute Sixty-Fourth Revised Sheet No. 4 was filed in order to reflect the correct gas cost shown in South Georgia's last regularly scheduled PGA filing.

South Georgia states that copies of the filing will be served upon all of South Georgia's purchasers, shippers, interested state commissions and interested parties as well as on all parties of record in the subject proceeding.

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 (§§ 385.211 and 385.214). All such motions or protests should be filed on or before August 8, 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. 90–18367 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–151–000]

Stingray Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 1, 1990.

Take notice that on July 27, 1990, Stingray Pipeline Company (Stingray) tendered for filing First Revised Sheet Nos. 80 and 119 to be a part of its FERC Gas Tariff, Original Volume No. 1.

Stingray states that the tariff sheets were submitted to reflect a change in its nomination procedures. Stingray specifically states that the tariff sheets were revised to provide: (1) For nominations to be submitted by 8 a.m. Central Time of the fourth (previously 5 p.m. Central Time of the fifth) business day prior to the first day of each month, (2) that if a nomination schedule is supplied after the Nomination Date, service will begin within four (previously five) business days after the nomination is processed, subject to available capacity, and (3) that a change in previously submitted nominations must be submitted by 9 a.m. Central Time (previously noon Central time) of the day prior to the day such change is to be effective.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 27, 1990.

Stingray states that a copy of the filing is being mailed to Stingray's jurisdictional customers and interested State regulatory agencies.

Any person desiring to be heard or to protect 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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 8, 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. 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18368 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP90–122–002, RP88–191–022 and RP85–178–069]

Tennessee Gas Pipeline Co.; Compliance Filing

August 1, 1990.

Take notice that, in accordance with the Commission's directives in its "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions," issued June 29, 1990 in Docket No. RP90–122–000,[1] Tennessee Gas Pipeline Company (Tennessee) submitted on July 30, 1990 a filing to comply with the June 29, 1990 Order and the Commission's February 27, 1989 "Order Terminating Technical Conference Proceedings" in Docket No. RP88–191, issued June 29, 1990 pursuant to authorization granted by the United States Court of Appeals for the District of Columbia Circuit.[2]

Tennessee states that in the Commission's Order issued subject to leave of court on February 27, 1989 in Docket No. RP88–191, the Commission directed Tennessee to file a revised allocation of costs to reflect (1) Tennessee's absorption of an additional $5,070,324, plus interest, in take-or-pay costs; and (2) the exclusion of off-system sales volumes for East Tennessee Natural Gas Company (East Tennessee) and Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) from the calculation of purchase deficiencies. In accordance with the Commission's directives, Tennessee has credited to its customer subaccounts of the Take-Or-Pay Account (as defined in Article XXX of the General Terms and Conditions of Tennessee's FERC Gas Tariff) (1) Each customer's allocable share of the $5,070,324, plus interest; and (2) amounts resulting from the reallocation of costs reflecting the exclusion of off-system sales for East Tennessee and Alabama-Tennessee from the calculation of purchase deficiencies. Tennessee has submitted as Appendix A to its filing supporting workpapers showing the calculations used in making these adjustments.

Tennessee states that pursuant to the terms of the Stipulation and Agreement (October 14, 1987) in *Tennessee Gas Pipeline Co.*, Docket No. RP86–119, 42 FERC ¶ 61,175 (1988) and Article XXX of the General Terms and Conditions of

[1] *See Tennessee Gas Pipeline Co.*, Docket No. RP90–122–000, mimeo at 7, Ordering Paragraph D; mimeo at 1–2, footnote 2.

[2] The Commission issued the February 27, 1989 Order subject to leave of court, which the Court granted on June 11, 1990. By its June 29, 1990 Order, the Commission entered its February 27, 1989 Order and gave Tennessee 30 days within which to comply with the earlier Order.

Tennessee's tariff, Tennessee will file on November 30, 1990 revised tariff sheets setting forth the Take-Or-Pay Demand Rate Surcharge for each of Tennessee's CD, G, and GS customers to be effective January 1, 1991. The surcharge amounts set forth in that filing will reflect the above-referenced allocation adjustments.

In its June 29, 1990 Order in Docket No. RP90–122, the Commission noted that:

> By order issued November 1, 1989, in Docket Nos. RP85–178–006 and RP88–191–014, 49 FERC 61,130 (1989), the Commission accepted, subject to leave of the court, revised tariff sheets filed by Tennessee reflecting that certain take-or-pay costs would be recovered from CNG Transmission Corporation (CNG) instead of North Penn Gas Company (North Penn). The court has not yet granted the Commission leave to issue this order. Once authorization from the court has been granted, Tennessee must revise the instant filing to reflect the reallocation of costs between CNG and North Penn.

By Order dated July 20, 1990, the Court granted the Commission leave to issue its November 1, 1989 Order in Docket Nos. RP85–178–006 and RP88–191–014. Accordingly, Tennessee states that it is filing 10 copies of the following tariff sheets to Volume No. 1 of its FERC Gas Tariff to reflect the reallocation of costs between CNG and North Penn, effective July 1, 1990:

Substitute Fourth Revised Sheet No. 41
Substitute Fourth Revised Sheet No. 43
First Revised Sheet No. 245E
First Revised Sheet No. 245F

These revised tariff sheets reflect that 49% of the take-or-pay and contract reformation costs reflected in the May 31, 1990 filing allocated to and otherwise payable by North Penn pursuant to the direct billing procedures established in *Tennessee* Docket Nos. RP86–119, *et al.* have been reallocated to CNG. In addition, Tennessee states that it will bill CNG for 49% of the take-or-pay and contract reformation costs already paid by North Penn, plus carrying charges, for the period July 1988 through June 1990 in the amount of $3,612,115.

Tennessee has also reallocated to CNG 49% of the take-or-pay amounts that Tennessee has collected from North Penn pursuant to the Stipulation and Agreement dated July 25, 1986 in Docket Nos. RP85–178, *et al.* and approved by order issued July 31, 1987 in the amount of $748,201. *Tennessee Gas Pipeline Co.*, 40 FERC 61,145 (1987).

Upon receipt from CNG of payments for the RP86–119 and RP85–178 costs reallocated to CNG from North Penn, totaling $4,360,316 (to be billed on the July 1990 invoice) Tennessee states that it will make corresponding refunds to North Penn. Tennessee has submitted as Appendix B to its filing supporting workpapers showing the calculations used in making the CNG/North Penn allocation adjustments.

Tennessee states that the total take-or-pay costs to be reallocated to CNG pursuant to the procedures established in Docket Nos. RP86–119, *et al.* are subject to change in the event of any future filings by Tennessee in accord with Article XXX of the General Terms and Conditions of its tariff or as a result of any future court action or Commission action on remand in AGD v. FERC, No. 88–1385 (D.C. Circuit).

In addition, Tennessee has reconciled the carrying charges associated with estimated take-or-pay costs included in Tennessee's May 31, 1989 take-or-pay surcharge filing in Docket No. RP88–191 with carrying charges actually incurred by Tennessee as of November 30, 1989, in accordance with the Commission's prior directives. On November 30, 1989 Tennessee filed to reflect the true-up of estimated and actual take-or-pay principal amounts, but did not reflect a corresponding carrying charge adjustment in that filing, which the Commission accepted by order issued December 29, 1989. 49 FERC 61,429 (1989). The true-up of the carrying charge calcuations are reflected in the workpapers included in Appendix A of Tennessee's filing.

Tennessee requests that the Commission grant any waivers it deems necessary for acceptance of this filing.

Tennessee states that a copy of the tariff filing is being mailed to all affected customers and state regulatory commissions and all parties in Docket Nos. RP90–122, RP85–178 and RP88–191 and is available for public inspection in a convenient form and place during regular business hours at Tennessee's offices in the Tenneco Building, 1010 Milam, Houston, Texas 77002.

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 (1989)). All such protests should be filed on or before August 9, 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 fille 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. 90–18369 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–152–000]

CNG Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1990.

Take notice that on July 30, 1990, CNG Transmission Corporation ("CNG") pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission in Docket Nos. RP88–217, et al., on October 6, 1989, and section 12.10 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets, all to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Third Revised Sheet No. 31
Second Revised Sheet No. 32
First Revised Sheet No. 38

CNG proposes an effective date of August 1, 1990.

The purpose of this filing is to recover 75% of $2.31 million in take-or-pay costs paid by CNG to certain producer suppliers that had contracts in litigation on March 31, 1989.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene 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 and 385.211. All motions or protests should be filed on or before August 8, 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. 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. 90–18357 Filed 8–6–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA91-1-32-000]

Colorado Interstate Gas Co.; Notice of Filing of Annual Purchased Gas Adjustment

August 1, 1990.

On July 31, 1990, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect an annual purchased gas adjustment ("PGA"):

Third Revised Second Substitute First Revised Sheet No. 7.1
Third Revised Second Substitute First Revised Sheet No. 7.2
Third Revised Second Substitute First Revised Sheet No. 8.1
Third Revised Second Substitute First Revised Sheet No. 8.2

CIG requests that these proposed tariff sheets be made effective on October 1, 1990.

The tariff rates underlying Third Revised Second Substitute First Revised Sheet Nos. 7.1 through 8.2 reflect a net .23 cent decrease in the commodity rate for the G–1, P–1, SG–1, H–1, F–1 and PS–1 Rate Schedules, which includes a 3.76 cent increase in the current adjustment attributable to projected purchased gas for quarter beginning October 1, 1990, and a 3.99 cent decrease attributable to the expiration of the current "credit" surcharge (1.55 cents) on September 30, 1990. There is no change in the Demand–1 or Demand–2 rates. The proposed rates compare with those filed by CIG on June 5, 1990, in Docket No. TQ90–3–32, which rates were accepted by Commission Letter Order dated July 3, 1990, to become effective on July 1, 1990.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 22, 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. Any person wishing to become a party 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 in the public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18358 Filed 8–6–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-108-003]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 1, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 30, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective June 1, 1990:

Substitute First Revised Sheet No. 50
First Revised Sheet No. 51

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's May 31, 1990 suspension order, as modified by its July 13, 1990 order on rehearing, and within the time frame established in the letter order issued July 11, 1990, by the Director, Office of Pipeline and Producer Regulation.

Columbia also states that the filing complies with Ordering Paragraph D(7) of the suspension order, as modified by the order on rehearing and the letter order, which requires Columbia to file, within fifteen days after the issuance of the order on rehearing, certain tariff revisions concerning prepayment of reservation charges in connection with requests for firm transportation service.

Columbia states that copies of the filing were served upon the parties to the proceeding, Columbia's wholesale customers and interested state regulatory commissions.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 8, 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. 90–18359 Filed 8–6–90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-21-NG]

Brooklyn Interstate Natural Gas Corp.; Order Granting Blanket Authorization to Import Natural Gas from Canada and Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Brooklyn Interstate Natural Gas Corporation blanket authorization to import up to 150 Bcf of natural gas from Canada and Mexico over a term of two years, commencing 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, July 30, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–18446 Filed 8–6–90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3817-8]

Notice of Establishment of the Acid Rain Advisory Committee and Request for Nominations of Candidates

SUMMARY: The Environmental Protection Agency (EPA) is establishing an Acid Rain Advisory Committee pursuant to the Federal Advisory Committee Act, 5 U.S.C. (app. I). EPA has determined that this action is necessary and in the public interest and that the Advisory Committee will assist the Agency in performing its duties as required to develop and implement an acid rain control program. The committee's

purpose is to provide independent advice and counsel to the Agency on policy and technical issues associated with development and implementation of any acid rain regulatory program required by Amendments to the Clean Air Act. The Advisory Committee shall be asked to advise the Agency on economic, environmental, scientific, technical, and enforcement policy issues.

At this time, EPA also requests nominations of candidates for membership on the Advisory Committee. The membership of the committee will represent a balance of perspectives and professional qualifications and experience to contribute to the functions of the Advisory Committee. Members will be drawn from: industry and business; academic and educational institutions; Federal, State and local government agencies; and non-government and environmental groups.

DATES: Submit nominations of candidates no later than September 7, 1990. Any interested person or organization may submit the names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address, and telephone number. Candidates will be asked to submit a resume of their background, experience, qualifications and other relevant information as a part of the review process.

ADDRESSES: Submit suggestions for the list of candidates to: Paul Horwitz, Advisory Committee Nominations, Acid Rain Division (ANR–445), Environmental Protection Agency, 401 M Street SW; Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Paul Horwitz at the above address, or call (202) 475–9400. The Agency will not formally acknowledge or respond to nominations.

SUPPLEMENTARY INFORMATION: The Acid Rain Advisory Committee will become operational when EPA files copies of the Advisory Committee charter with appropriate committees of Congress and the Library of Congress. Copies of the charter are available upon request.

The purpose of the Acid Rain Advisory Committee is to provide informed advice and counsel to the Assistant Administrator, Office of Air and Radiation, on issues affecting the development and implementation of an acid rain regulatory program including the innovative market based components which are likely to be included in the legislation. Specific issues for review will include: The regulatory impact on industry, consumers, public health, and the environment; the structure and operations of the allowance trading and tracking systems and the permit program; integrating the acid rain control program with EPA's ambient air program; and various conservation and innovative technology transfer options that can be used to comply with the regulatory requirements.

The Advisory Committee is a necessary part of EPA's efforts to serve the public interest and to design a market-based approach to reducing sulfur dioxide and nitrogen oxide. The Advisory Committee will assist the Agency in considering specific technical, economic, environmental, scientific, and enforcement policy issues.

Participants

The committee shall have about 25 participants; however, meetings will be open to all interested parties. Committee members shall serve two-year terms.

The Advisory Committee shall meet at least four times a year, or as necessary. Subcommittees shall meet when the committee deems necessary. EPA will not compensate committee members for their service, though compensation for travel and nominal daily expense while attending meetings may be provided.

The Agency intends to hold the initial meeting of the Advisory Committee in early fall of 1990. Suggestions for the list of candidates should be submitted no later than September 7, 1990.

Dated: July 30, 1990.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 90–18453 Filed 8–6–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3818–1]

Availability of Report to Congress on Special Wastes from Mineral Processing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Agency's *Report to Congress on Special Wastes from Mineral Processing* which is required by § 8002(p) of the Resource Conservation and Recovery Act (RCRA). The Report to Congress contains detailed studies of 20 special wastes from mineral processing operations that the Agency previously determined are within the scope of the exemption from hazardous waste regulations provided by section 3001(b)(3)(A)(ii) of RCRA; this exemption is often referred to as the Mining Waste Exclusion. The report also presents two alternative decision-making approaches and tentative findings under each approach with respect to whether subtitle C regulation of these wastes is warranted. The Report to Congress is comprised of three volumes:

Volume I—Summary and Findings;
Volume II—Methods and Analyses; and
Volume III—Appendices.

The Agency solicits public comment on the Report, the alternative decision-making approaches and the tentative findings presented therein, and the specific types of requirements that might be appropriate for wastes that EPA determines should be regulated under section D or other regulatory approaches, especially under the flexibility provided by RCRA section 3004(x). Information submitted in public comments will be used in conjunction with the Report to Congress to make the final regulatory determination on these wastes.

DATES: EPA will accept public comments on the *Report to Congress on Special Wastes from Mineral Processing* until September 28, 1990. The Agency will also hold a public hearing on the Report on September 25, 1990.

ADDRESSES: Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer, Office of Solid Waste. (WH–562), U.S. Environmetnal Protection Agency, 401 M Street, SW., Washington, DC, 20460. The public hearing will be at the Holiday Inn Crowne Plaza Hotel at Metro Center, 1325 G Street NW., Washington, DC 20005. The hearing will begin at 9 a.m. with registration beginning at 8:30 a.m. The hearing will end at 5 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes, and are requested to provide written comments for inclusion in the official record.

Copies of the full Report are available for inspection and copying at the EPA Headquarters library and at the RCRA Docket in Washington, DC, and at all EPA Regional Office libraries. Copies of the full report can be purchased from the National Technical Information Service (call (202) 487–6540 or (800) 336–4700). Copies of the Summary and Findings (Volume I) can be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (202) 382–3000.

Those wishing to submit public comments for the record must send an original and two copies of their

comments to the following address: RCRA Docket Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Place the docket number F-90-RMPA-FFFFF on your comments.

The OSW docket is located in room M2427 at EPA headquarters. The docket is open from 9 to 4 Monday through Friday, except for Federal holidays. Members of the public must make an appointment to review the docket materials. Call (202) 475-9327 for appointments. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRC/Superfund Hotline at (800) 424-9346 or (202) 382-3000; for technical information contact Bob Hall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, (202) 475-8814.

SUPPLEMENTAL INFORMATION: Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA), sometimes referred to as the Bevill Amendnent, temporarily excluded "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under subtitle C of RCRA pending completion of a Report to Congress on the wastes (as required by subtitle 8002(p)), and a determination by the EPA Administrator (as required by section 3001(b)(3)(C)) either to promulgate regulations under subtitle C or that such regulations are unwarranted. The Bevill Amendment was added to RCRA on October 12, 1980, as part of the Solid Waste Disposal Act Amendments of 1980.

In response to the 1980 RCRA amendments, EPA published an interim final amendment to its hazardous waste regulations on November 19, 1980, to reflect the provisions of the Bevill Amendment (45 FR 76618). The regulatory language incorporating the exclusion was identical to the statutory language, except that EPA added the phrase "including coal." In the preamble to the amended regulation, however, EPA interpreted the exclusion to include "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals."

In December 1985, EPA published the required Report to Congress on solid wastes from mineral extraction and beneficiation, and on July 3, 1986, (51 FR 24496), published a determination that regulation of such wastes under subtitle C of RCRA was not warranted. Also in 1985, EPA proposed to narrow the scope of the exclusion as it applied to mineral processing wastes (50 FR 40292, October 2, 1985). The effect of this proposal was generally to remove most smelting and refining wastes from the Bevill exclusion. However, EPA subsequently withdrew this proposal (51 FR 3633, October 9, 1986). The Agency's decision to withdraw its 1985 proposal to narrow the scope of the exclusion as applied to mineral processing waste was challenged in court ([*Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D.C. Cir. 1988), *cert. denied* 109 S. Ct. 1120 (1989) (*EDF* v. *EPA*)]). In this case, the petitioners contended, and the Court of Appeals agreed, that EPA's interpretation of the scope of the Mining Waste Exclusion as it applies to mineral processing wastes was "impermissibly over-broad," and that Congress intended to include only those ores or minerals that meet the "special waste" concept—that is "high volume, low hazard" wastes.

In response to the Court's decision, EPA proposed criteria on October 20, 1988, (53 FR 41288), by which mineral processing wastes would be evaluated for continued exclusion from hazardous waste regulation until the required studies (Report to Congress) and subsequent regulatory determinations were made. The Agency proposed revisions to the criteria on April 17, 1989, (54 FR 15316), and provided the final Mining Waste Exclusion criteria, among other things, on September 1, 1989 (54 FR 36592). The final criteria consist of a definition of mineral processing, a volume criterion, and a low hazard criterion.

The September 1, 1989, rule also finalized the status of most mineral processing waste streams. That rule temporarily retained five wastes, conditionally retained 20 wastes, and permanently removed all other mineral processing wastes from the Mining Waste Exclusion. The 20 conditionally retained wastes were addressed in a proposed rule on September 25, 1989 (54 FR 39298).

The September 25, 1989, proposed rule was finalized on January 23, 1990, (55 FR 2322), and established which wastes would be subject to the temporary exemption from subtitle C requirements established by the Bevill Amendment for mineral processing wastes and, therefore, the *Report to Congress on Special Wastes from Mineral Processing*. In the final rule, 15 of the 20 conditional wastes were retained within the exclusion (in addition to the five wastes retained in the September 1 rule, for a total of 20 wastes), pending the preparation of the Report to Congress. All other solid wasts from the processing of ores and minerals were removed from the Mining Waste Exclusion as of the effective date of the September 1, 1989, or January 23, 1990, final rules (March 1, 1990, or July 23, 1990, in non-authorized states), and are subject to regulation as hazardous wastes if they exhibit one or more characteristics of hazarous waste or are otherwise listed as hazardous waste.[1]

The 20 mineral processing special wastes temporarily retained in the exclusion by the September 1, 1989, and January 23, 1990, final rules and studied in the Report to Congress are:

1. Red and brown muds from bauxite refining;
2. Treated residue from roasting/leaching of chrome ore;
3. Gasifier ash from coal gasification;
4. Process wastewater from coal gasification;
5. Slag from primary copper processing;
6. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
7. Slag tailings from primary copper processing;
8. Slag from primary production of elemental phosphorus;
9. Iron blast furnace air pollution control dust/sludge;
10. Iron blast furnace slag;
11. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
12. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
13. Fluorogypsum from hydrofluoric acid production;
14. Process wastewater from hydrofluoric acid production;
15. Slag from primary lead processing;
16. Process wastewater from primary magnesium processing by the anhydrous process;
17. Phosphogypsum from phosphoric acid production;
18. Process wastewater from phosphoric acid production;
19. Chloride process waste solids from titanium tetrachloride production; and
20. Slag from primary zinc processing.

[1] Because the requirements of the September 1, 1989, and January 23, 1990, final rules were not imposed pursuant to the Hazardous and Solid Waste Amendments of 1984, they will not be effective in RCRA authorized states until the state program amendments are effective. Thus, the rules are effective on March 1, 1990, and July 23, 1990 (for the September 1, 1989, and January 23, 1990, rules respectively) only in those states that do not have final authorization to operate their own hazardous waste programs in lieu of the Federal program. In authorized states, the rules are not applicable until the state revises its program to adopt equivalent requirements under state law and receives authorization for these new requirements. (Of course, the requirements will be applicable as state law if the state law is effective prior to authorization.) States that have final authorization must revise their programs to adopt equivalent standards regulating non-exempt mineral processing wastes that exhibit hazardous characteristics as hazardous by July 1, 1991, if regulatory changes only are necessary, or by July 1, 1992, if statutory changes are necessary. The state requirements become RCRA subtitle C requirements after EPA approval.

These 20 special wastes are generated by 91 facilities located in 29 states, and represent 12 commodity sectors. For each of the 20 special wastes, the report addresses the following eight study factors as required by section 8002(p) of RCRA:

1. The source and volumes of such materials generated per year;
2. Present disposal and utilization practices;
3. Potential danger to human health and the environment from the dispoal and reuse of such materials;
4. Documented cases in which danger to human health or the environment has been proven;
5. Alternatives to current disposal methods;
6. The costs of such alternatives;
7. The impacts of these alternatives on the use of phosphate rock, uranium ore, and other natural resources; and
8. The current and potential utilization of such materials.

In addition, section 8002(p) suggests that the Agency review other federal and state "studies and actions" (e.g., regulations) to avoid duplication of effort.

The Agency's approach in preparing the Report to Congress was to combine certain study factors for purposes of analysis and exposition. The resulting discussions of each of the mineral commodity sectors are organized in seven sections in Volume II of the Report. The first section provides a brief overview of the industry, including the types of production processes used and the number and location of operating facilities that generate one or more of the mineral processing special wastes. The second section summarizes information on special waste characteristics, generation, and current management practices (study factors 1 and 2), while the third section provides a discussion of potential for and documented cases of danger to human health or the environment (study factors 3 and 4). The fourth section summarizes applicable federal and state regulatory controls. The fifth section discussed alternative waste management practices and potential utilization of the wastes (study factors 5 and 8), while the sixth section discusses costs and impacts of alternative practices (study factors 6 and 7). The seventh and final section summarizes and analyzes the findings of EPA's evaluation of the above study factors.

After studying each special waste in detail and to facilitate comment on the Report to Congress, the Agency developed two approaches for tentatively determining whether regulation under RCRA subtitle C is warranted for any of the wastes. One approach is based on the analysis of the RCRA section 8002(p) study factors and consists of two sub-options: One utilizing a full subtitle C scenario (Approach 1A) while the other utilizes the flexibility provided by § 3004(x) of RCRA (referred to as the Subtitle C-Minus scenario or Approach 1B). The other approach (Approach 2) is based on both consideration of the section 8002(p) study factors and additional consideratons, such as broader Agency goals and objectives (e.g., developing strong state mining waste programs and facilitating implementation of federal programs). Under Approach 1A, EPA might find that regulation under subtitle D may be appropriate for 19 of the 20 special wastes and that regulation under subtitle C may be warranted for one mineral processing special waste, process wastewater from hydrofluoric acid production. Alternatively, if the cost analysis is based on the subtitle C-Minus scenario, then EPA might find that three additional wastes may warrant regulation under subtitle C rather than subtitle D (Approach 1B):

(1) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(2) Slag from primary lead processing; and

(3) Chloride process waste solids from titanium tetrachloride production.

Under Approach 2, which is based on consideration of both the section 8002(p) study factors and additional considerations (i.e., developing and maintaining strong state mining and mineral processing waste regulatory programs and facilitating the implementation of Federal programs), the Agency might find that regulation under Subtitle C may not be warranted for any of the 20 mineral processing wastes.

It should be noted that the costing scenarios used for (1) The subtitle C scenario that uses the flexibility provided by § 3004(x) of RCRA and (2) the subtitle D scenario are based on the Agency's preliminary assessment of how the regulatory requirements might be tailored for mineral processing wastes. Because of this, the Agency is unsure whether the costs-impacts we have determined are fully appropriate and specifically request comments on them.

The Agency solicits public comments on the data, analyses, and findings contained in the Report to Congress and on the types of specific requirements that might be necessary under RCRA subtitles C or D for each of the 20 wastes covered by the report.

The Agency encourages all interested parties to obtain a copy of the Report to Congress and provide comments to the Agency. After evaluating and responding to public comments, the Agency will make a regulatory determination by January 31, 1991.

Date: July 31, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90-18454 Filed 8-6-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3817-7]

Sole Source Aquifer Designation for the Plymouth-Carver Aquifer, Massachusetts

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In response to a petition from the Massachusetts Department of Environmental Protection (DEP), Division of Water Supply (DWS), the Town of Kingston, and the Plymouth County Coalition for a Better Environment, notice is hereby given that the Regional Administrator, Region I, of the U.S. Environmental Protection Agency (EPA) has determined that the Plymouth-Carver Aquifer satisfies all determination criteria for designation as a sole source aquifer, pursuant to section 1424(e) of the Safe Drinking Water Act. The designation criteria include the following: Plymouth-Carver Aquifer is the principal source of drinking water for the residents of that area; there are no reasonably available alternative sources of sufficient supply; the boundaries of the designated area and project review area have been reviewed and approved by EPA; and if contamination were to occur, it would pose a significant public health hazard and a serious financial burden to the area's residents. As a result of this action, all federal financially assisted projects proposed for construction or modification within the Plymouth-Carver Aquifer will be subject to EPA review to reduce the risk of ground water contamination from these projects which may pose a threat to the health of persons in the acquifer's service area.

DATES: This determination shall be promulgated for purposes of judicial review two weeks after publication in the Federal Register.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region I, J.F. Kennedy Building, Water Management Division, GWP-2113,

Boston, MA 02203. The designation petition submitted may also be inspected at EPA Region I, or the Plymouth Public Library in Plymouth, or the Carver Public Library in Carver, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert E. Adler, Ground Water Management Section, Water Management Division, EPA Region I, J.F. Kennedy Building, WGP–2113, Boston, MA 02203, and the phone number is 617–565–3600.

SUPPLEMENTARY INFORMATION: .

I. Background

Section 1424(e) of the Safe Drinking Water Act (42) U.S.C. section 300h–3(e), Public Law 93–523, states:

> If the administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On April 7, 1989, EPA received a petition from the Massachusetts DEP requesting designation of the Plymouth-Carver Aquifer as a sole source aquifer. EPA determined that the petition, after receipt and review of additional requested information, fully satisfied the Completeness Determination Checklist. A public hearing was then scheduled and held on January 10, 1990 in Plymouth, Massachusetts, in accordance with all applicable notification and procedural requirements. A four week public comment period followed the hearing.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the detailed review and technical verification process for designating an area under section 1424(e) were: (1) Whether the aquifer is the sole or principal source (more than 50%) of drinking water for the defined aquifer service area, and that the volume of water from an alternative source is insufficient to replace the petitioned aquifer; (2) whether contamination of the aquifer would create a significant hazard to public health; and (3) whether the boundaries of the aquifer, its recharge area, the project designation area, and the project review view are appropriate. On the basis of technical information availble to EPA at this time, the Regional Administrator has made the following findings in favor of designating the Plymouth-Carver Aquifer as a sole source aquifer:

1. The Plymouth-Carver Aquifer is the sole source of drinking water for nearly all of the residents within the service area.
2. There exists no reasonably available alternative drinking water source or combination of sources of sufficient quantity to supply the designated service area.
3. The petitioners, with EPA assistance, have appropriately delineated the boundaries of the designated aquifer area, the aquifer recharge area, the project review area and the aquifer's service area.
4. Although the quality of the aquifer's ground water is rated as good to excellent, it is highly vulnerable to contamination due to its geological characteristics. Because of this, contaminants can be rapidly introduced into the aquifer system from a number of sources with minimal assimilation. This may include contamination from several sources such as the following: chemical spills; highway, urban and rural runoff; septic systems; leaking storage tanks, both above and underground; road salting operations; saltwater intrusion; and landfill leachate. Since nearly all residents are dependent upon the aquifer for their drinking water, a serious contamination incident could pose a significant public health hazard and place a severe financial burden on the service area's residents.

III. Description of the Plymouth-Carver Aquifer, Designated and Project Review Area

The Plymouth-Carver Aquifer is a 199.0 square mile aquifer located in eight (8) towns in southeastern Massachusetts, primarily in Plymouth County, north of the Cape Cod Canal in Bourne and south of the Jones River in Kingston. Plymouth Bay borders the aquifer on the northeast with Cape Cod Bay bordering the eastern edge. As delineated in this petition, the Cape Cod Canal forms the southeastern border, Buzzards Bay forms the southern border, and the Weweantic River forms the southwestern border. To the west and north, the aquifer is bordered successively by the Weweantic River, Rocky Meadow Brook, Muddy Pond Brook, River Brook, wetland areas, and finally, along the northern border, the Jones River. It includes the entire area of the Towns of Plymouth, Bourne and Sandwich north of the Cape Cod Canal, most of the Towns of Carver and Wareham, substantial portions of Kinston and Plympton, and a small section of the Town of Middleborough (8 towns).

The Plymouth-Carver aquifer exhibits regional ground water flow patterns that are typical of coastal aquifers in eastern Massachusetts. Unlike upland stream-valley aquifer systems in which ground water flow is generally convergent or inward from high elevations of till and bedrock to low elevations within valleys, the flow pattern within the Plymouth-Carver aquifer is divergent, radiating outward from a topographically high area toward low lying bodies of both salt and fresh water. Ground water discharges to steams and the ocean.

The unconsolidated stratified glacial deposits which form the aquifer were deposited during the last retreat of glacial ice about 15,000 years ago. These deposits are saturated with water fed by direct infiltration of precipitation (recharge). The saturated thickness of the aquifer is the entire thickness of the aquifer from the water table to the top of bedrock. Ground water table elevations range from approximately sea level to approximately 125 feet at interior ground-water highs, with the maximum saturated thickness of more than 160 feet at some locations occurring along the axis of the underlying bedrock valley and its tributaries. Average hydraulic conductivities (ability of the aquifer material to transmit water) for stratified sand and gravel, range from 55 to 313 feet/day and average 188 fee/day. These values are consistent with values for similar deposits on nearby Cape Cod. The average rate of recharge to coarse-grained stratified drift is at least 1.15 million gallon/day/square mile (24 inches/year) and to fine-grained deposits is somewhat less.

Ground water in the aquifer system discharges to the many rivers and streams that drain the aquifer, to ponds, swamps, bogs and directly to the ocean. Average ground water discharge leaving the aquifer area as stream flow is about 140 cubit feet/second. All ponds and surface waters within the aquifer receive nearly all of their recharge from ground water and hence can be considered part of the Plymouth-Carver aquifer system. Much of the water that discharges to swamps and bogs is lost as a result of evaporation, transpirtation, and consumption water use.

The Plymouth-Carver aquifer is quite vulnerable to contamination. Because of its highly permeable and transmissive character, and large size granular materials, ground water contaminants can quickly travel long distances, and affect a large area. The recharge area is characterized by moderate relief. Activities occurring in the upland areas can have direct impact on ground water quality in the rest of the aquifer. The present quality of the water from the aquifer has been characterized as good to excellent. Municipal supply wells in the aquifer area have been affected by relatively few instances of major contamination. There are, however, several instances of local contamination which have occurred at several places in the aquifer.

The designated area is defined as the surface area above the aquifer and its recharge area, which in the case of the Plymouth-Carver aquifer, comprises the project review area as well. The project review area is also the same as the designated area.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition submitted to EPA Region I by the petitioners; additional information requested from and supplied by the petitioners; written and verbal comments submitted by the public, communities in the region, state legislators; coordination with the U.S. Geological Survey and technical information obtained from them, and the technical papers and maps submitted with the petition. This information is available to the public and may be inspected at the libraries or EPA Region I office identified under the "Addresses" section previously.

V. Project Review

EPA Region I is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding have been developed through which EPA will be notified of proposed commitments by federal agencies to projects which could contaminate the Plymouth-Carver Aquifer. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into for planning or designing a project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially assisted project will be the coordination with state and local agencies and the project's developer. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in Plymouth-Carver Aquifer.

VI. Summary and Discussion of Public Comments

Forty five people attended the January 10, 1990 public hearing regarding the Plymouth-Carver Sole Source Aquifer Petition. Many delivered supportive oral comments, but the Town of Plymouth expressed some concern regarding the implications of a designation on their public works projects. Forty formal comments were made in total during the hearing and the four-week comment period. Comments were received from state legislators, local water supliers and fire districts, local communities, a regional planning agency, environmental interests, etc. All but one of these supported the designation. Questions were raised regarding the following:

1. The location of the northwest corner of the delineated boundary; and
2. The extent and limitations of protection provided by the federal Sole Source Aquifer Program and the need for local government to continue with taking actions to protect the aquifer.

In response to questions about delineation of the designated aquifer area, EPA explained that the aquifer is charaterized by divergent ground water flow from a high ground water table elevation in the interior area of the aquifer. The area along the northwest section of the aquifer is characterized by bogs, wetlands, meandering streams, flat topography, and low ground water gradient. The boundary issue that was raised at the hearing related to the precise placement of the boundary line in specific localized areas. Following explanation of the basis for delineation, no further comments were made. The boundary, as originally proposed in the petition, is the boundary that is delineated in this designation.

EPA responded to comments which expressed concern and confusion that the effectiveness of sole source aquifer designations is limited because only a small part of the development in the designated area will receive federal financial assistance. EPA recognized the limited applicability of the program and acknowledged that a comprehensive ground water protection program must include land use planning and management at the state and local levels as well. The DEP and EPA noted, however, that Massachusetts state regulations for underground storage tanks, site assignment for new solid waste landfills, and for hazardous waste facilities, give added protection by restricting these facilities when sole source aquifers are involved. Also, SSA designation often brings a new awareness locally for protecting resources.

The Town of Plymouth opposed the designation of the aquifer. In its opposition, the Town asserted that the designation will result in more government overview and interference, will delay certain public road improvements to route 44, and will favor an ocean outfall over a land based treatment option in planning for a sewage treatment facility. EPA agreed that the designation would add another layer of review for impacts affecting the quality of ground water in the aquifer. It is noted that such aquifer reviews generally do not hinder or delay projects because the reviews conducted on large projects are in conjunction with federal Environmental Impact Statements (EISs), environmental assessments, or state Environmental Impact Reports (EIRs). EPA routinely participates in the scoping and assessment of EISs and EIRs for major projects. This has been the case in the route 44 improvements. On smaller projects, reviews are generally less complicated, take three to six weeks, and do not cause undue delay. It is also noted that protection of public health is the principal concern of the program. Project delays that result in the protection of public health are favored over project expediency.

In addition to the concern that designation causes local project delays, the Town took the position that a sole source aquifer review is an unnecessary layer of review because local government can "protect its own." At the hearing, EPA observed that if local authorities, state and federal environmental and regulatory agencies are all carrying out their statutory and regulatory duties, the sole source aquifer review will be minimal, and in most cases will be incorporated into the existing environmental review processes.

In response to the issue that designation of a sole source aquifer would likely favor an ocean outfall option over a land based discharge option in Plymouth's sewage treatment planning, it is noted that the designation would not necessarily prelude a land based discharge. It is further noted that for land disposal to be allowed, Massachusetts ground water discharge permit regulations would probably require advanced treatment and effluent that would meet Massachusetts drinking water standards. As such, the performance standards would be determined under state regulations and scrutinized by EPA in their implementation.

The Town of Plymouth also expressed concern over the apparent lack of definitive guidelines from EPA governing the sole source aquifer program resulting in confusion and uncertainty. It is noted that EPA has clear and definitive Petitioner Guidance, Reviewer's Guidance, regulations concerning the implementation of the program at the Edwards aquifer, Region II post-designation guidance, relevant applicable state performance requirements, risk assessment capabilities, and others.

Notable letters of support were received from state and local governemnts and representatives, water suppliers, environmental organizations and residents. Reasons given for support include: (1) The nearly total dependence of the residents on the aquifer's ground water for their drinking water supply; (2) the fact that there are no reasonably available alternative sources of water, and that proper boundaries have been delineated; (3) growth and development in the Plymouth-Carver region threaten the continued purity of the resource; and (4) the Plymouth-Carver Aquifer's designation as a sole source aquifer would heighten public awareness of the vulnerability of the resource and would encourage further protection efforts.

VII. Findings

Given the information before me, all criteria for designating the Plymouth-Carver aquifer as a sole source aquifer have been met, and the region's aquifer is a resoruce that fully deserves efforts to protect it.

Dated: July 31, 1990.

Julie Belaga,

Regional Administrator.

[FR Doc. 90–18457 Filed 8–6–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3817–1]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Kaiser Aluminum and Chemical Corporation, Mulberry, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given by the United States Environmental Protection Agency (EPA) that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Kaiser Aluminum and Chemical Corporation for its one Class I hazardous waste injection well located at Mulberry, Florida. As required at 40 CFR part 148, the company has adequately demonstrated to the satisfaction of EPA by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Kaiser Aluminum and Chemical Corporation of the specific restricted hazardous waste, identified in the petition, into the Class I hazardous waste injection well at the Mulberry facility, specifically identified as Disposal Well No. 1, until September 30, 2007. The injection fluid is process wastewater from the manufacture of sodium and potassium silicofluorides and water from Kaiser's South Pond, which is a combination of water from the surficial aquifer ground-water recovery system and all process area rainfall, wash water, vacuum pump seal water, occasional scrubber water, and air conditioning cooling water. The waste stream is regulated as a characteristic liquid hazardous waste under 40 CFR 261.22(a)(1) because it exhibits the characteristic of corrosivity due to having a pH less than 2.

As required at 40 CFR 124.10, a public notice was issued April 30, 1990. A public hearing was held May 31, 1990. The public comment period closed on June 13, 1990. All comments have been addressed and have been considered in the final decision. This decision constitutes final EPA action and there is no Administrative appeal process available for this final petition decision.

DATES: This action is effective as of July 30, 1990.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including citizen comments and EPA's response to comments, are on file at the following location: Environmental Protection Agency, Region IV, Water Management Division, Ground-Water Protection Branch, 345 Courtland Street, Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanette Maulding, Environmental Scientist, EPA, Region IV, telephone (404) 347–3866.

Dated: July 30, 1990.

Joseph R. Franzmathes,

Acting Regional Administrator.

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby give notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in §572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011198–003.

Title: Puerto Rico/Caribbean Discussion Agreement.

Parties:

Hapag–Lloyd AG
Thos. & Jas. Harrison Ltd.
Nedlloyd Lines, B.V.
Compagnie Generale Maritime
Sea-Land Service, Inc.
Crowley Caribbean Transport
Trailer Marine Transport

Synopsis: The proposed amendment would add Puerto Rico Marine Management, Inc. as a party to the Agreement. The parties have requested a shorthand review period.

Dated: August 1, 1990.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 90–18326 Filed 8–6–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 1, 1990.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before August 21, 1990.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title*: Monthly Report of Foreign Branch Assets and Liabilities.
Agency form number: FR 2502.
OMB Docket number: 7100-0078.
Frequency: Monthly.
Reporters: Foreign branches of U.S. banks.
Annual reporting hours: 17,753.
Estimated average hours per response: 2.6.
Number of respondents: 569.
Small businesses are not affected.

General description of report

The FR 2502 report collects data on assets and liabilities, by category of customer, from foreign branches of U.S. banks and Edge and Agreement corporations with assets of $150 million or more. The data show the balance of accounts denominated in U.S. dollars, the balance of those denominated in all other currencies combined (reported in U.S. dollars), and the total thereof. The data are used in the construction of the monetary aggregates, in the supervision and regulation of U.S. banks, and in the construction of measures of transactions with foreign countries.

Individual respondent data are regarded as confidential under the Freedom of Information Act (FOIA) [5 U.S.C. 552(b)(4) and (b)(8)]. Aggregate data for all branches are published monthly in the Federal Reserve Bulletin.

2. *Report title*: Quarterly Report of Foreign Branch Assets and Liabilities.
Agency form number: FR 2502s.
OMB Docket number: 7100-0079.
Frequency: Quarterly.
Reporters: Foreign branches of U.S. banks.
Annual reporting hours: 7,966.
Estimated average hours per response: 3.5.
Number of respondents: 569.
Small businesses are not affected.

General description of report

The FR 2502 report collects the amount, by country, of assets and liabilities held by foreign branches of U.S. banks and Edge and Agreement corporations with assets of $150 million or more. The data are used to monitor international banking developments.

Individual respondent data are regarded as confidential under the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). Aggregate data are published by the Federal Reserve System in a quarterly statistical release. Aggregate data on claims on foreigners held by U.S.-chartered banks are published monthly in the Federal Reserve Bulletin. Data relating to offshore branches are provided to the Bank for International Settlements.

Proposal to approve under OMB delegated authority the discontinuation of the following report:

1. *Report title*: Report of Claims on Selected Foreign Countries by U.S. Branches and Agencies of Foreign Banks.
Agency form number: FR 2029b.
OMB Docket number: 7100-0064.
Frequency: Semiannually.
Reporters: U.S. banks and agencies of foreign banks.
Annual reporting hours: 342.
Estimated average hours per response: 3.
Number of respondents: 57.
Small businesses are not affected.

General description of report

The FR 2029b collects information as of the last day of June and December on the maturity distribution of the claims on foreigners held by U.S. branches and agencies of foreign banks, as well as their commitments to extend future credit. The Federal Reserve System proposes to discontinue the collection of these data because acceptable substitutes are available on the Treasury International Capital (TIC) reports.

Board of Governors of the Federal Reserve System, August 1, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-18405 Filed 8-6-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 892 3005]

American Life Nutrition, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York City

based wholesale distributors of dietary food supplements from making false and unsubstantiated health efficacy claims for any food or drug in the future. In addition, it would require the respondents to publish retractions of previous advertising claims for certain bee pollen, royal jelly, fish oil, and vitamin products, that were published in eight newspapers and magazines, and to send corrective notices to past wholesale and retail purchasers.

DATES: Comments must be received on or before October 9, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom/Harriet Mulhern, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, N.Y., N.Y. 10038. (202) 264–8290/(212) 264–1226.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the matter of American Life Nutrition, Inc., American Life FarFun, Inc., corporations, and Ling Won Tong, individually and as an officer and director of the corporations.

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Life Nutrition, Inc., American Life FarFun, Inc., corporations, and Mr. Ling Won Tong, individually and as an officer and director of the corporations, hereinafter sometimes referred to as proposed respondents, and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between American Life Nutrition, Inc., American Life FarFun, Inc., and Mr. Ling Won Tong, by their duly authorized officer, and their attorney, and counsel for the Federal Trade Commission that:

(1) Proposed respondents American Life Nutrition, Inc. and American Life FarFun, Inc. are corporations organized, existing and doing business under and by virtue of the laws of the State of New York, with their office and principal place of business located at 60 East Broadway, New York, New York 10002. Proposed respondent, Mr. Ling Won Tong, is the President, Executive Director, sole officer and director of ALN.

(2) Proposed respondents admit all the jurisdictional facts set forth in the draft of the complaint attached hereto.

(3) Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusion of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint attached hereto.

(6) This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) This agreement is premised upon proposed respondents' sworn financial statement and related documents previously provided to the Commission. Upon duly noticed motion to the Commission, filed no later than three (3) years after the entry of this Consent Order, the Commission may make a determination whether there are any material misrepresentations in said sworn financial statement and related documents. If the Commission finds any material misrepresentation in the sworn financial statement and related documents submitted by proposed respondents, in addition to such other remedies as may be provided by law, that finding shall cause this Consent Order to be set aside and the Commission in that event shall be permitted to reopen this matter and take such action as it deems appropriate. Prior to the making of any such determination, the Commission shall notify the proposed respondents of any discrepancy and provide them with a reasonable opportunity to explain or justify the disputed entry in the sworn financial statement or related document.

(8) Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that, once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this Order the following definitions shall apply:

(A) *Respondents* means American Life Nutrition, Inc. and American Life

FarFun, Inc., corporations, their successors and assigns, officers, directors, agents, representatives, independent contractors, and employees, and Mr. Ling Won Tong, individually and as an officer and director of said corporations.

(B) *Person* means any individual, group, association, limited or general partnership, corporation, or any other business entity.

(C) An *affiliate* of a given person means any other person:

(1) That directly or indirectly controls, is controlled by, or is under common control with, the given person; or

(2) That directly or indirectly owns, controls, or holds with power to vote, ten percent (10%) or more of the outstanding voting securities of the given person.

(D) *Commission* means the Federal Trade Commission.

(E) *Drug* is defined in section 15(c) of the FTC Act, 15 U.S.C. 55(c), as, *inter alia*, "articles (other than food) intended to affect the structure or any function of the body of man or other animals."

(F) *Food* is defined in section 15(b) of the FTC Act, 15 U.S.C. 55(b), as "(1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article."

(G) *Dietary Food Supplement* means any food used to supplement the normal diet of men and women to improve nutrition.

(H) *Competent and reliable scientific evidence* means tests or studies in which persons with skill and expert knowledge, in the field to which the tests or studies pertain, conduct the tests or studies and evaluate their results in an objective manner using testing, evaluation, and analytical procedures that are generally accepted in the profession to yield accurate and reliable results.

(I) *Comparable to the print advertisements placed by respondents between December 1, 1987 and December 1, 1988* means one print advertisement in each publication in which respondents placed a print advertisement between December 1, 1987 and December 1, 1988. Each such advertisement shall appear on the same day of the week as the original advertisements in that publication appeared most frequently, and on the same or comparable page on which the original advertisements in that publication appeared most frequently. Each such advertisement shall be the same size as the largest size advertisement originally placed by respondents in that publication. Each statement required by this order shall be clear and conspicuous, displayed in type size which is at least as large as that in which the principal portion of the text of the advertisement appears, and shall be separated from the text, or enclosed in a black or red border, so that it may be readily noticed.

II

It is ordered That respondents, directly or through any corporation, affiliate, division, or other device, in connection with the advertising, labelling, offering for sale, sale, or distribution of any food, drug, or dietary food supplement, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Making any representation, directly or by implication, that Life FarFun 100% Natural Honeybee Pollen Nuggets, or any similar honeybee pollen product:

(1) Will help prevent or effectively treat breast cancer;

(2) Will help prevent or effectively treat diabetes;

(3) Will help prevent or effectively treat heart disease;

(4) Will help prevent or effectively treat influenza;

(5) Will help prevent or effectively treat arthritis;

(6) Will help prevent or effectively treat dyspepsia (indigestion);

(7) Will help prevent or effectively treat high blood pressure;

(8) Will help prevent or effectively treat constipation;

(9) Will help prevent or effectively treat hemorrhoids or moles;

(10) Will help prevent or effectively treat the common cold;

(11) Will help cause a weight gain or loss;

(12) Will help prevent or effectively treat prostate gland illness;

(13) Will help prevent or effectively treat asthma;

(14) Will help prevent or effectively treat hay fever;

(15) Will help prevent or effectively treat skin sensitivity or dry skin;

(16) Will help prevent or effectively treat swollen ankles;

(17) Will help increase sex drive; or,

(18) Will help prevent or effectively treat serious or life-threatening diseases.

(B) Making any representation, directly or by implication, that Gelee Royale Americaine Fresh Natural American Royal Jelly, or any similar royal jelly product:

(1) Will help erase or prevent wrinkles;

(2) Will help delay or prevent the aging process;

(3) Will help improve sexual ability;

(4) Will help prevent or effectively treat psilosis (hair loss);

(5) Will help prevent or effectively treat cerebral anemia or insomnia;

(6) Will help prevent or effectively treat eczema;

(7) Will help increase appetite, or promote the growth of children;

(8) Will help prevent or effectively treat trembling of hands or legs, fainting, or stiff muscles;

(9) Will help prevent or effectively treat arteriosclerosis, paralysis, rubella, or fatigue; or,

(10) Will help prevent or effectively treat tuberculosis or hepatitis.

(c) Making any representation, directly or by implication, that American Yuyu King Supernatural Fish Oil Concentrate, or any similar fish oil product;

(1) Will prevent heart problems for the rest of the user's life, or will remove any need for a user to worry about the heart;

(2) Will help prevent or effectively treat rheumatism;

(3) Will help prevent or effectively treat cerebral apoplexy; or,

(4) Will help prevent or effectively treat scabies.

D. Making any representation, directly or by implication, that Million Vitaming Complete Vitamins and minerals, or any similar vitamin or mineral product;

(1) Will help prevent or effectively treat all contractible diseases;

(2) Will help prevent or effectively treat eye diseases, ailments; or poor eyesight for the typical purchaser;

(3) Will help increase the number of red blood cells for the typical purchaser; or,

(4) Will help prevent or effectively treat prostrate gland enlargement for the typical purchaser;

III

It is further ordered That respondents, directly or through any corporation, affiliate, division, or other device, in connection with the advertising, labelling, offering for sale, sale, or distribution of any food, drug, or dietary food supplement, in or affecting commerce, as "commerce" is defined n the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication:

(A) That any food, drug, or dietary food supplement is, or consists of ingredients that are, specified, approved, endorsed, or found to be safe or effective in the treatment or prevention of any disease, disorder, of condition, by any governmental or other agency or spokesperson, unless such is the fact.

(B) Regarding the efficacy, safety, or performance of any food, drug, or dietary food supplement, unless, at the time the representation is made, respondents possess and rely upon a reasonable basis consisting of competent and reliable scientific evidence that substantiates such representation.

IV

It is further ordered That respondents, directly or through any corporation, affiliate, division, or other device, in connection with the advertising, labelling, offering for sale, sale, or distribution of any food, drug, or dietary food supplement, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to state, in print adverstisements comparable to the print advertisements place by respondents between December 1, 1987 and December 1, 1988, full and accurate Chinese-language translations of the following:

(A) Contrary to prior advertising claims, Life Farfun 100% Natural Honeybee Pollen Nuggets will not help prevent or effectively treat breast cancer; will not help prevent or effectively treat diabetes; will not help prevent or effectively treat heart disease; will not help prevent or effectively treat influenza; will not help prevent or effectively treat arthritis; will not help prevent or effectively treat dyspepsia (indigestion); will not help prevent or effectively treat high blood pressure; will not help prevent or effectively treat hemorrhoids or moles; will not help prevent or effectively treat the common cold; will not help cause a weight gain or loss; will not help prevent or effectively treat prostrate gland illness; will not help prevent or effectively treat hay fever; will not help prevent or effectively treat skill sensitivity or dry skin; will not help prevent or effectively treat swollen ankles; will not help increase sex drive; will not help prevent or effectively treat serious or life-threatening diseases; and, has not been approved or endorsed by the United States Government.

(B) Contrary to prior advertising claims, Gelee Royale Americaine Fressh Natural American Royal Jelly will not help erase or prevent wrinkles; will not help delay or prevent the aging process; will not help improve sexual ability; will not help prevent or effectively treat psilosis (hair loss); will not help prevent or effectively treat cerebral anemia or insomnia; will not help prevent or effectively treat eczema; will not help increase appetite, or promote the growth of children; will not help prevent or effectively treat trembling or hands or legs, fainting, or stiff muscles; will not help prevent or effectively treat arteriosclerosis, paralysis, rubella, or fatigue; and will not help prevent or effectively treat tuberculosis or hepatities.

(C) Contrary to prior advertising claims, American Yuyu King Supernatural Fish Oil Concentrate will prevent heart problems for the rest of the user's life, and will not remove any need for a user to worry about the heart; will not help prevent or effectively treat rehematism; will not help prevent or effectively treat cerebral apoplexy; and, will not help prevent or effectively treat scabies.

(D) Contrary to prior advertising claims, Million Vitaming Complete Vitamins and minerals will not help prevent or effectively treat all contractible diseases; will not help prevent or effectively treat eye diseases, ailments, or poor eyesight for the typical purchaser; will not help increase the number of red blood cells for the typical purchaser; and, will not help prevent or effectively treat prostrate gland enlargement for the typical purchaser.

V

It is further ordered That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, affiliates, or any other changes made in the corporations that may affect compliance obligations arising out of this Order.

VI

It is further ordered That for a period of ten (10) years from the date of entry of this Consent Order, respondent Ling Won Tong shall promptly notify the Commission of the discontinuance of his present business or employment, and of his affiliation with any new business or employment whose activities include the advertising, promotion, offering for sale, or sale of food, drug, or dietary food supplement products, each such notification to include respondent's new business address and a statement of the nature of the business or employment in which respondent is newly engaged, as well as a description of the respondent's duties and responsibilities in connection with the business or employment.

VII

It is further ordered That respondents shall maintain for at least three (3) years from the date of service of this Order, and make available to Commission staff upon request, copies of:

(A) All records and documents necessary to demonstrate fully respondents' compliance with each provision of this Consent Order;

(B) All materials that were relied upon by respondents in disseminating any statement or representation covered by this Order;

(C) All test reports, studies, surveys, demonstrations, or other evidence in its possession or control, that contradict, qualify, or call into question any statement or representation that is covered by this Order;

(D) All advertising and promotional materials disseminated to any person;

(E) All corrective advertising statements furnished to any person;

(F) Any materials offering, directly or by implication, any money-back or gurarantee of satisfaction in connection with the purchase of any of respondents' products.

(G) Any request for a refund from any person, any correspondence, or other records relating to such request, and documentation sufficient to show the date, manner, amount, and recipient of any refund made.

VIII

It is further ordered That respondents shall distribute a copy of this Consent Order, along with a full and accurate Chinese-language translation of part IV thereof, to any present or future officers, directors, agents, representatives, independent contractors, and employees with sales or marketing functions, and any other persons in active concert or participation with them in connection with the advertising, labelling, distribution, promotion, offering for sale, or sale of any food, drug, or dietary food supplement, and to all distributors (either retail or wholesale), and manufacturers of products marketed by respondents, in or affecting interstate commerce, and shall secure from each such person a signed and dated statement acknowledging receipt of said Consent Order.

IX

It is further ordered That respondents shall distribute to all persons who purchased any of respondents products between January 1, 1987, and the date of service of this order, and for whom respondent either possesses a mailing address or whose mailing address is provided to respondent by staff of the Federal Trade Commission, a notice comprised of full and accurate Chinese-language translations of Paragraph IV (A), (B), (C), and (D) of this order. This

notice shall include, immediately preceding these translations, a full and accurate Chinese-language translation of the following statement:

"IMPORTANT NOTICE: The following information regarding our products is provided pursuant to a consent order issued by the United States Federal Trade Commission against American Life Nutrition, Inc. we are providing this information to our customers through you and through advertisements in various publications."

X

It is further ordered That respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order. Such report shall include full and accurate English-language translations of all Chinese language advertising than in use, or contemplated to be used, by respondents.

Analysis of Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement containing a consent order from American Life Nutrition, Inc., American Life FarFan, Inc., and Mr. Ling Won Tong, hereinafter collectively known as "ALN."

The consent order has been placed on the public record for sixty (60) days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

This matter is a Chinese-language false advertising case. It concerns health claim representations made for five (5) dietary food supplements in Chinese-language media. The Commission's complaint charges that representations made by ALN are false and misleading and that respondents did not possess and rely upon well-controlled clinical tests as a reasonable basis for making these representations.

Specifically, the complaint charges that in numerous advertisements respondents have claimed that Life FarFun Honeybee Pollen, Gelee Royale Royal Jelly, American Yuyu King Fish Oil, and Million Vitaming Vitamins and Minerals, will prevent or effectively treat such diseases as breast cancer, diabetes, high blood pressure, heart disease, influenza, arthritis, asthma, common cold, prostate gland enlargement, rheumatism, arteriosclerosis, tuberculosis, and hepatitis among others; will reduce fat and cholesterol in the blood, help stop hardening of the arteries, migraine headaches, protect the kidneys, and increase sex drive, among other health claims. Additionally, the complaint charged that ALN did not substantiate its claims that Good Darling calcium tablets will prevent and treat osteoporosis, rickets, and weak legs.

Under the order respondents would be required to cease and desist from representing, directly or by implication, that any honeybee pollen product will or can help prevent or effectively treat breast cancer, diabetes, heart disease, influenza, arthritis, dyspepsia (indigestion), high blood pressure, constipation, hemorrhoids or moles, the common cold, prostate gland illness, asthma, hay feber, skin sensitivity or dry skin, swollen ankles, serious or life-threatening diseases, or will or can help cause a weight gain or loss, or help increase sex drive.

Respondents would further be required to cease and desist from representing, directly or by implication, that any royal jelly product will or can help erase or prevent wrinkles, help delay or prevent the aging process, improve sexual ability, treat psilosis (hair loss), help prevent or effectively treat cerebral anemia or insomnia, eczema, trembling of hands or legs, fainting, or stiff muscles, arteriosclerosis, paralysis, rubella, fatigue, tuberculosis or hepatitis, or will or can help increase appetite, or promote the growth of children.

In addition, respondents would be required to cease and desist from representing, directly or by implication, that any fish oil product will or can help prevent heart problems for the rest of the user's life, remove any need for a user to worry about the heart, or effectively treat rheumatism, cerebral apoplexy, or scabies.

Respondents also would be required to cease and desist from representing, directly or by implication, that any vitamin or mineral product will or can help prevent or effectively treat all contractible diseases, eye diseases, ailments, or poor eyesight, prostate gland enlargement or help increase the number of red blood cells.

The consent order further would prohibit ALN from representing directly or by implication, that any food or drug has been found to be safe or effective in the treatment or prevention of any disease, disorder, or condition, by any governmental or other agency or spokesperson, unless such is the fact.

Additionally, the efficacy, safety, or performance of any food or drug may not be claimed in any advertisements unless, at the time the representation is made, ALN possesses and relies upon "competent and reliable" scientific evidence that substantiates such representations. For any test or study to be "competent and reliable" it must be one conducted by a person with skill and expert knowledge in the field to which the test or study pertains.

The consent order also would required ALN to publish a retraction of false health claims in eight (8) Chinese-language print media:

"WORLD JOURNAL DAILY," "UNITED JOURNAL," SING TAO JIH PAO," "THE YOUNG CHINA DAILY," "CHINESE TIMES," "CHINA TIMES WEEKLY," "WORLD JOURNAL WEEKLY," and "NEW YORK WEEKLY ENTERTAINMENT."

The retractions are intended to mitigate the effects of ALN's prior false advertisements preventing further harm.

The order further would require ALN to maintain for at least three (3) years from the date of service of the order all records and documents to demonstrate their compliance with the order; to distribute a copy of the order along with a full and accurate Chinese-language translation of the corrective advertising to every present and future officer, director, agent, representative, independent contractor and employee with sales or marketing functions, to every manufacturer of any product marketed by respondents; and to identified others; and to secure from each such person a signed and dated statement acknowledging receipt of the consent order and corrective statement.

In addition, ALN would have to distribute a copy of the corrective advertising paragraphs contained in paragraph III (A), (B), (C), and (D) of the order to all persons, including every wholesale and retail distributor, who purchased their products between January 1, 1987, and the date of service of the order.

The order would require ALN to file a compliance report within sixth (60) days after the date of service of the order.

The purpose of this analysis is to facilitate public comment on the order and is not intended to constitute an official interpretation of the agreement and order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-18441 Filed 8-6-90; 8:45 am]

BILLING CODE 6750-01-M

[File No 882 3202]

Nationwide Acceptance Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Chicago, Ill., based corporation to cease and desist from failing to disclose required information, under the Fair Credit Reporting Act, to rejected applicants for consumer credit. It would also require the respondent to mail informational brochures and letters, which disclose certain required information, to all applicants who were rejected for consumer credit or charged an increased amount for credit, based on a report from a consumer reporting agency or third party, between July 1, 1988 and December 31, 1989.

DATES: Comments must be received on or before October 9, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sandra Wilmore, FTC/S–4429, Washington, DC 20580. (202) 326–3169.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Nationwide Acceptance Corporation, a corporation, and it now appearing that Nationwide Acceptance Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, without acknowledging the violation of any law or rule or regulation, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Nationwide Acceptance Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Nationwide Acceptance Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 3435 North Cicero Avenue, Chicago, Illinois 60641.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes and does not constitute an admission by proposed respondent that any law or regulation has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates, that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the terms "consumer," "consumer report," and "consumer reporting agency" shall be defined as provided in sections 603(c), 603(d), and 603(f), respectively, of the Fair Credit Reporting Act, 15 U.S.C. 1681, 1681a(c), 1681a(d) and 1681a(f).

I

It is ordered That respondent Nationwide Acceptance Corporation, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, divison or other device, in connection with any application for consumer credit, do forthwith cease and desist from:

1. Failing, whenever consumer credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, to disclose to the applicant at the time the adverse action is communicated to the applicant (a) that the adverse action was based wholly or partly on information contained in such a report and (b) the name and address of the consumer reporting agency making the report.

2. Failing, within ninety (90) days after the date of service of this Order, to mail a copy of the letter attached hereto as appendix A, completed to provide the name and address of the consumer reporting agency supplying the report and to state the reasons for the denial or credit or the increase charge for credit based wholly or partly on information contained in the report, to each applicant who was denied credit by Nationwide Acceptance Corporation between Jyly 1, 1988, and December 31, 1989, based in whole or in part on information contained in a consumer report from a consumer reporting agency, such letter to be sent by first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of each of the FTC brochures; *provided,* however, if the applicant was later extended credit or given the notice required by section 615(a) of the Fair Credit Reporting Act, a copy of the letter attached as appendix A need not be sent.

3. Failing, whenever consumer credit is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, to disclose to the applicant at the time that the adverse action is communicated to the applicant the consumer's right to make a written request as to the nature of the information considered, and if such written request is submitted by the consumer, to disclose the nature of the information to the consumer.

4. Failing, within ninety (90) days after the date of service of this Order, to mail a copy of the letter attached hereto as appendix B, completed to provide the nature and source of information obtained from a third party other than a credit reporting agency and to state the reasons for the denial of credit or the increased charge for credit based wholly or partly on such information, to each applicant who was denied credit by Nationwide Acceptance Corporation between July 1, 1988, and December 31, 1989, based in whole or in part on information obtained from a third party other than a credit reporting agency, such letter to be sent by first class mail to the last known address of the applicant that is reflected in respondent's files, and accompanied by a copy of each of the FTC brochures; *provided,* however, if the applicant was later extended credit or given the notice required by section 615(b) of the Fair Credit Reporting Act, a copy of the letter attached as appendix B need not be sent.

II

It is further ordered That respondent, its successors, and assigns shall maintain for at least two (2) years and upon request shall make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of paragraph I.1 to I.4 of this Order, such documents to include, but not be limited to, all credit evaluation criteria, instructions given to employees regarding compliance with the provisions of this Order, any notices provided to consumers pursuant to any provisions of this Order, and the complete application files to which they relate.

III

It is further ordered That respondent shall deliver a copy of this Order at least once per year for a period of four (4) years from the date of this Order, to all present and future employees engaged in reviewing or evaluating applications for consumer credit.

IV

It is further ordered That respondent shall, for a period of four (4) years from the date of this Order, notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or divisions, or any other change in the corporation which may affect compliance obligations arising out of the Order.

V

It is further ordered That respondent shall, within one hundred fifty (150) days of service of this order, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A

Dear Customer:

Our records show that sometime within the last two years, Nationwide Acceptance Corporation denied your application for consumer credit. The federal Fair Credit Reporting Act gives persons who are denied consumer credit the right to know whether the denial was based on information supplied by a consumer reporting agency or credit bureau and, if so, the name and address of the credit bureau.

Our records show that when we denied your application, we may not have told you that our decision was based, at least in part, on information contained in your credit report and may not have given you the reasons for our decision. The credit bureau that furnished the report is:

_____

[Name of Consumer Reporting Agency]

_____

[Street Address]

You should contact the credit bureau to learn what information is in your file. You may obtain this information without charge if you contact the credit bureau within 30 days. An extra copy of this notice is enclosed so that you may give it to the credit bureau when you request to review your file.

The information in your credit report led us to deny your application for the following reason(s):

—No credit file
—Unable to verify credit references
—Delinquent past or present obligations with others
—Excessive obligations in relation to income
—Garnishment, attachment, foreclosure, repossession, collection action or judgment
—Bankruptcy
—Other: _____

Brochures explaining your rights under the federal credit laws are enclosed. If you want more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, DC 20580.

Thank you.

Appendix B

Dear Customer:

Our records show that sometime within the last two years Nationwide Acceptance Corporation denied your application for consumer credit. The federal Fair Credit Reporting Act gives persons who are denied consumer credit the right to know whether the denial was based on information supplied by a third party such as a creditor, an employer or landlord and, if so, to learn the nature of this information.

Our records show that when we denied your application, we may not have told you that our decision was based on information obtained from a third party and may not have given you the reasons for our decision. The information we obtained from a third party led us to deny your application for the following reason(s):

—Unable to verify employment
—Unable to verify residence
—Temporary or irregular employment
—Unable to verify income
—Unable to verify credit references
—Delinquent past or present credit obligations with others
—Other: _____

The source of this information was:

—Your employer
—Your landlord
—Another creditor
—Other: _____

Brochures explaining your rights under the federal credit laws are enclosed. If you want

more information about your rights, write to the Federal Trade Commission, Division of Credit Practices, Washington, DC 20580.

Thank you.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Nationwide Acceptance Corporation, a corporation (the "respondent"). Under this agreement, the respondent will cease and desist from failing to disclose required information to rejected applicants for consumer credit, and will mail Commission informational brochures and letters that disclose required information to all applicable applicants who were rejected for consumer credit during a specified one and a half year period.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns the denial of consumer credit based on information obtained from consumer reporting agencies or other third parties. The Complaint accompanying the proposed consent order alleges that in connection with the offering and extension of consumer credit, the respondent engaged in acts and practices in violation of sections 615(a) and 615(b) of the Fair Credit Reporting Act and section 5(a)(1) of the Federal trade Commission Act.

According to the complaint, the respondent has denied applications for consumer credit or has increased the charge for such credit based in whole or in part on information supplied by a consumer reporting agency, but has failed to advise consumers that the information so supplied contributed to the adverse action taken on their applications, and has failed to advise consumers of the name and address of the consumer reporting agency that supplied the information, in violation of section 615(a) of the Fair Credit Reporting Act. Also, according to the Complaint, the respondent has denied applications for consumer credit or has increased the charge for such credit based in whole or in part on information obtained from persons other than consumer reporting agencies bearing on comsumers' creditworthiness, credit standing, credit capacity character, general reputation, personal characteristics, or mode of living and has failed to advise consumers of the nature of the information considered or of their rights to request the nature of the information considered, in violation of section 615(b) of the Fair Credit Reporting Act.

Further, the Complaint alleges that by its failure to comply with sections 615(a) and 615(b) of the Fair Credit Reporting Act and pursuant to section 621(a) of the Fair Credit Reporting Act, respondent has engaged in unfair and deceptive acts or practices in or affecting commerce in violation of section 5(a)(1) of the Federal Trade Commission Act.

The consent order contains provisions designed to prevent the respondent from engaging in similar allegedly illegal acts and practices in the future.

Specifically, part I of the order requires the respondent to cease and desist from failing to provide the required disclosures outlined in sections 615(a) and 615(b) of the Fair Credit Reporting Act whenever consumer credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency or obtained from a person other than a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.

Further, part I of the order requires the respondent, within ninety (90) days after the date of the service of the order, to mail Commission brochures and a letter to each consumer denied credit or charged an increased amount for credit, between July 1, 1988, and December 31, 1989, based in whole or in part on information contained in a consumer report from a consumer reporting agency or obtained from a third party. Each letter to consumers against whom adverse action was taken based on a consumer report from a consumer reporting agency, must provide the name and address of the consumer reporting agency that supplied the report in question, as well as the reason for the adverse action. Each letter to the consumers against whom adverse action was taken based on information obtained from a third party must provide the nature and source of information obtained, as well as the reason for the adverse action.

Part II of the order requires respondent, its successors, and assigns to maintain documents demonstrating compliance with the order for two (2) years to and to make all such documents available to the Commission upon request.

Part III of the order requires the respondent to deliver a copy of the order at least once a year for four (4) years from the date of the order to all present and future employees that review or evaluate consumer credit applications.

Part IV of the order requires the respondent to notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure.

Part V of the order requires the respondent to file a written report with the Commission within one hundred fifty (150) days after service of the order detailing the manner and form in which it has complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90–18442 Filed 8–6–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Notice of Hearing or Reconsideration of Disapproval of Missouri Medicaid State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on September 18, 1990 in Kansas City, Missouri to reconsider our decision to disapprove the requested effective date of Missouri State Plan Amendment 89–26.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk August 22, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 966–4471.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove the requested effective date

The plan amendment was submitted by the State of Missouri on September 25, 1989, together with assurances and related rate information. The State published a public notice which met the Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Missouri SPA 89–26 establishes a prospective payment methodology for pediatric long-term care facilities. The State has redefined the calculation of the Medicaid per-diem rate, thereby, significantly modifying its methods and standards used for setting payment rates. The State has requested an effective date of July 1, 1989.

The issue in this matter is whether the State's proposal to redefine the calculation of the Medicaid per diem rate significantly modifies its methods and standards used for setting payment rates and, therefore, must meet the public notice requirements in Federal regulations at 42 CFR 447.205.

Federal regulations at 42 CFR 430.12(c) require a State plan to be amended to reflect new or revised Federal statutes or regulations or material change in any phase of State law, organization, policy, or State agency operation. In accordance with Federal regulations at 42 CFR 447.253(f), the Medicaid agency must also comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for long-term care facility services. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Sections 447.205 (c) and (d) set forth additional requirements regarding the content and publication of the notice.

Section 1116 of the Social Security Act (the Act) and 42 CFR Part 430 establish requirements at 42 CFR 447.205 on October 17, 1989. Accordingly, the effective date for the amendment could not be July 1, 1989. However, HCFA approved the amendment with an effective date of October 18, 1989, the day following the publication of the State's public notice.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Gary J. Stangle,
Director, Department of Social Services
Broadway State Office Building, P.O. Box 1527, Jefferson City, Missouri 65102

Dear Mr. Stangler: I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 89–26. It relates to the State Medicaid plan for payment of long-term care services. The amendment would establish a prospective payment methodology for pediatric long-term care facilities. The State has requested an effective date of July 1, 1989.

The issue in this matter is whether the State's proposal to redefine the calculation of the Medicaid per diem rate significantly modifies its methods and standards used for setting payment rates and, therefore, must meet the public notice requirements in Federal regulations at 42 CFR 447.205.

I am scheduling a hearing on your request to be held on September 18, 1990, at 10:00 a.m. in Room 215, New Federal Office Building, 601 East 12th Street, Kansas City, Missouri. It this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 966–4471.

Sincerely,
Gail R. Wilensky, Ph.D.
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 1, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–18424 Filed 8–6–90; 8:45 am]

BILLING CODE 4120–03–M

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 46, No. 223, p. 56912, dated Thursday, November 19, 1981) is amended to revise the functional statement for the Office of the Attorney Advisor (OAA). The functional statement is being revised to indicate that OAA will provide staff support to the HCFA Administrator in the review of decisions issued by the Medicare Geographical Classification Review Board.

The specific change to Part F. is described below:

Section F.20., Functions, is amended by deleting paragraph B. in its entirety and replacing it with the following paragraph. The new Section F.20.B. reads as follows:

B. Office of the Attorney Advisor (FA–2)

The Office of the Attorney Advisor is headed by a Supervisory Attorney Advisor with reporting responsibility to the Administrator, HCFA. The Supervisory Attorney Advisor recommends initiation of "own motion review" of Provider Reimbursement Review Board decisions under Section 1878(f)(1) of the Social Security Act (the Act), as amended, and of Medicare Geographical Classification Review Board (MGCRB) decisions under Section 1886(d)(1)(C)(iii)(II) of the Act. Evaluates cases under "own motion review" and recommends the disposition of such cases by the Administrator. Evaluates and makes recommendations for disposition of MGCRB decisions appealed to the Administrator. The Office of the Attorney Advisor receives administrative support from the Office of the Associate Administrator for Management.

Dated: July 26, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90–18425 Filed 8–6–90; 8:45 am]

BILLING CODE 4120–03–M

[BPD-634-CN]

RIN 0938-AE29

Medicare Program; Update of Ambulatory Surgical Center Payment Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of notice with comment period.

SUMMARY: This document corrects technical errors to the notice with comment period published in the February 8, 1990 issue of the Federal Register [90-2760], beginning on page 4577.

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (301) 966-4571.

SUPPLEMENTARY INFORMATION: We are making the following corections to the February 8, 1990 document:

1. On page 4578, in the first column, in the 8th line from the bottom of the page, the year "1990" is corrected to read "1989"; in the 3rd line from the bottom of the page, the year "1989" is corrected to read "1987"; and in the last line, the year "1990" is corrected to read "1989".

2. On page 4578, in the second column, in the 1st line at the top of the page, the year "1990" is corrected to read "1989".

3. On page 4579, in the first column, in the 12th line from the bottom of the page, the year "1990" is corrected to read "1989".

4. On page 4579, in the second column, in the 8th line from the top of the page, the year "1990" is corrected to read "1989".

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplemental Medical Insurance)

Dated: August 1, 1990.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources and Management.

[FR Doc. 90-18422 Filed 8-6-90; 8:45 am]

BILLING CODE 4120-01-M

[BPD-460-CN]

RN 0938-AD44

Revision of Ambulatory Surgical Center Payment Rate Methodology; Medicare Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final notice.

SUMMARY: This document corrects technical errors to the final notice published in the February 8, 1990 issue of the Federal Register [90-2669], beginning on page 4526.

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (301) 966-4571.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the February 8, 1990 document:

1. On page 4538, in the first column of the table of procedures reclassified to higher payment groups, procedure code "9870" is corrected to read "29870".

2. On page 4538, in the second column of the table of procedures reclassified to higher payment groups, Procedure code "67035" is corrected to read "67935".

3. On page 4538, in the second column of the table of procedures reclassified to lower payment groups, procedure code "41110", the number "2" in the Proposed Payment group column and the number "1" in the Final Payment group column were erroneously included and should be deleted.

Addendum A—List of Covered Surgical Procedures

4. On page 4535, under Excision-benign lesions, the new payment group for procedure codes 11423 and 11424 is corrected from group "1" to read group "2".

5. On page 4544, under Repair-complex, the new payment group for procedure code 13101 is corrected from group "2" to read group "3".

6. On page 4546, under Grafts (or implants), the new payment group for procedure code 20912 is corrected from group "4" to read group "3".

7. On page 4548, under Excision, the old payment group for procedure code 24105 is corrected from group "4" to read group"3".

8. On page 4549, under Incision, the new payment group for procedure code 25040, is corrected from group "4" to read group "5".

9. On page 4551, under Repair, Revision or Reconstruction, the new payment group for procedure code 26352 is corrected from group "3" to read group "4".

10. On page 4551, under Repair, Revision or Reconstruction, the new payment group for procedure code 26418 is corrected from group "3" to read group "4".

11. On page 4552, under Repair, Revision or Reconstruction, the new payment group for procedure code 26535 is corrected from group "4" to read group "5".

12. On page 4552, under Repair, Revision or Reconstruction, the new payment group for procedure code 26567 is corrected from group "4" to read group "5".

13. On page 4553, under Excision, the new payment group for procedure code 27065 is corrected from group "4" to read group "5".

14. On page 4554, under Introduction and/or Removal, the new payment group for procedure code 27372 is corrected from group "6" to read group "7".

15. On page 4554, under Repair, Revision or Reconstruction, the old payment group for procedure code 27652 is corrected from group "3" to read group "4".

16. On page 4556, under Repair, Revision or Reconstruction, the old payment group for procedure code 28272 is corrected from group "3" to read group "4".

17. On page 4556, under Repair, Revision or Reconstruction, the new payment group for procedure code 28292 is corrected from group "4" to read group "2".

18. On page 4556, under Repair, Revision or reconstruction, the new payment group for procedure code 28293 is corrected from group "5" to read group "2".

19. On page 4556, under Arthroscopy, the new payment group for procedure code 29875 is corrected from group "3" to read group "4".

20. On page 4556, under Arthroscopy, the new payment group for procedure code 29876 is corrected from group "3" to read group "4".

21. On page 4556, under Arthroscopy, the new payment group for procedure code 29877 is corrected from group "3" to read group "4".

21. On page 4556, under Arthroscopy, the new payment group for procedure code 29881 is corrected from group "3" to read group "4".

23. On page 4557, under Repair, the new payment group for procedure code 30410 is corrected from group "4" to read group "5".

24. On page 4559, under Incision, the new payment group for procedure code 42335 is corrected from group "2" to read group "3".

25. On page 4561, under Excision, in the old payment group for procedure code 45331, 45333 and 45334, a "1" is added.

25. On page 4561, under Endoscopy, in the old payment group for procedure code 45383, a "1" is added and in the new payment group a "2" is added.

27. On page 4561, under the procedure narrative descriptor column for procedure code 45383, add: "Colonoscopy, fiberoptic, beyond splenic flexure; for ablation of tumor or mucosal lesion (e.g., electrocoagulation, laser photocoagulation, hot biospy/fulguration)".

28. On page 4562, under Hernioplasty, herniorrhaphy, herniotomy, the new payment group for procedure code 49550

is corrected from group "4" to read group "5".

29. On page 4564, under Repair, the new payment group for procedure code 54440 is corrected from group "5" to read group "4".

30. On page 4566, under Endoscopy-laparoscopy, the new payment group for procedure code 58985 is corrected from group "4" to read group "5".

31. On page 4567, under Excision-somatic nerves, the new payment group for procedure code 64774 is corrected from group "3" to read group "2".

32. On page 4569, under Iridotomy, Iridectomy for procedure code 66500, in the procedure narrative descriptor column, after "Iridotomy by stab incision (separate procedure); except transfixion.", delete "Iridotomy by stab incision (separate procedure); with transfixion as for iris bombe."

33. On page 4569, under Iridotomy, iridectomy, add "66505" after procedure code 66500; in the Payment groups, add "1" in the Old column and add "1" in the New column; and under the procedure narrative descriptor column, add "Iridotomy by stab incision (separate procedure); with transfixion as for iris bombe."

34. On page 4569, under Removal cataract, the old payment group for procedure code 66983 is corrected from group "5" to read group "4".

35. On page 4569, under Removal cataract, the old payment group for procedure code 66984 is corrected from group "5" to read group "4".

36. On page 4569, under Repair, add procedure code "67105" after procedure code 67101; add "4" to the old payment group and "5" to the new payment group. In the procedure narrative descriptor column, add "Repair of retinal detachment, one or more sessions; photocoagulation (laser or xenon arc, one or more sessions), with or without drainage or subretinal fluid."

(Catalog of Federal Domestic Assistance Program No. 13,774, Medicare-Supplemental Medical Insurance)

Dated: August 1, 1990.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources and Management.

[FR Doc. 90-18421 Filed 8-6-90; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Program Announcement for Grants for Programs for Physician Assistants

The Health Resourcers and Services Administration (HRSA) announces that applications for fiscal year (FY) 1991, Grants for Programs for Physician Assistants are being accepted under the authority of section 788(d), formerly section 783(a) of the Public Health Service Act (the Act), as amended by Public Law 100-607.

Section 788(d) authorizes the award of grants to accredited schools of medicine or osteopathic medicine and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

The Administration's budget request for FY 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure, that should funds become available for this purpose, grants can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds through the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of sections 701(8) and 788(d) of the Act and program regulations implementing these sections published at 42 CFR part 57, subparts H and I.

Each application must contain or be supported by assurances that the applicant institution has appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

Program for the Training of Physician Assistants is defined at 42 CFR 57.801-803 as a program which has, among other elements, the objective of training graduates who are capable of providing primary health care.

The following criteria will be considered in the review of applications:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;

2. The potential effectiveness of the project in carrying out the purposes of section 788(d) of the PHS Act and 42 CFR part 57, subparts H-I;

3. The capability of the applicant to carry out the proposed project;

4. The local, regional and national needs the project proposes to serve;

5. The adequacy of the project's plan for placing graduates in health manpower shortage areas;

6. The soundness of the fiscal plan for assuring effective use of grant funds;

7. The potential of the project to continue on a self-sustaining basis after the period of grant support; and

8. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. *Funding preferences*—funding a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. *Funding priorities*—favorable adjustment of review scores when applications meet specified objective criteria.

3. *Special considerations*—enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

The Administration does not intend to apply any funding preferences or special considerations in the review of applications for FY 1991.

Funding Priorities for Fiscal Year 1991

In determining the order of funding of approved applications, a funding priority will be given to the following:

(1) Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or exceeding their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic and American Indian/Alaskan Native) over average enrollment of the past three years in a training program.

(2) Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

(3) Applications that demonstrate sufficient curricular time and offerings devoted to assuring competence in the prevention, recognition and treatment of needs of persons with HIV/AIDS infection, including ambulatory and inpatient case management.

(4) Applications that demonstrate sufficient curricular time and offerings devoted to assuring competence in quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in FY 1989 after public comment and are being extended in FY 1991.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D–21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6002.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to: Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817.

To receive consideration, applications must meet the deadline of November 29, 1990, which means they must either be:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

This program is listed at 13.886 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: July 13, 1990.

Robert G. Harmon.

Administrator.

[FR Doc. 90–18407 Filed 8–6–90; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1990:

Name: National Advisory Council on Migrant Health.

Date and Time: August 15–17, 1990–1 p.m.

Place: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: Agenda will cover and overview of federal issues related to farmworkers, status of Migrant Health Program in relation to other federal, public and private programs, review of status of previous recommendations and future program activities.

Anyone requiring information regarding the subject Council should contact Mr. Jack Egan, Acting Executive Secretary, National Advisory Council on Migrant Health, room 7A–30, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Persons interested in attending any portion of the meeting should contact Mr. Egan, Acting Director, Migrant Health Program, or Maria Lago, Acting Deputy Director, Migrant Health Program, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: Auguest 2, 1990.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 90–18461 Filed 8–6–90; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting of AIDS Liaison Subcommittee of the AIDS Research Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on September 23–24, 1990, in Building 31C, Conference Room 10, at the National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 1 p.m. to recess on September 23, and from 8:30 a.m. to 1:30 p.m. on September 24. The subcommittee will discuss the mission and directions of the Division of AIDS (DAIDS) providing input and broad programmatic advice on the DAIDS extramural program with respect to basic and clinical research. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717) will provide a summary of the meeting and a roster of the committee members upon request.

Ms. Jean Noe, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Control Data Building, Room 201N, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone (301–496–0545) will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health).

Dated: August 1, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–18374 Filed 8–6–90; 8:45 am]

BILLING CODE 4140–01–M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for approval of a new information collection for an Evaluation of Issues Currently Affecting the Recruitment and Retention of Family Foster Parents.

ADDRESSES: Copies of the information collection request may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245–6275.

Written comments and questions regarding the requested approval for information collection should be sent

directly to: Angela Antonelli, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Evaluation of Issues Currently Affecting the Recruitment and Retention of Family Foster Parents

OMB No.: N/A

Description: The purpose of this evaluation is to provide the Administration for Children, Youth and Families (ACYF) with information about foster parent recruitment and retention issues which can be used to inform public policy. This will be the first nationwide survey of issues affecting foster parent recruitment and retention. While anecdotal information on the nature and extent of the problem exists, there are no systematic data upon which to predicate national policy.

The study will be based on data obtained from a mail and telephone survey of a nationally representative sample of 1,600 current and former foster parents residing in 16 counties in nine States. The survey will include 1,200 current foster parents and 400 former foster parents. Survey data will be supplemented by the information obtained from public and private agency staff responsible for recruitment and retention, and form focus group sessions with foster care workers and foster parents.

Annual number of respondents	1,600
Annual frequency	1
Average burden hours per response (mins.)	55
Total burden hours	1,467

Dated: July 30, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90–18325 Filed 8–6–90; 8:45 am]

BILLING CODE 4130–01–M

Office of the Assistant Secretary for Health Advisory Committee on the Food and Drug Administration; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Advisory Committee on the Food and Drug Administration (FDA) will hold a series of subcommittee meetings throughout the Fall. The dates and locations for the meetings are as follows:

Drugs & Biologics

Thursday, September 27, 1990 from 10:30 a.m. to 6 p.m. and Friday, September 28, 1990 from 9 a.m. to 2 p.m. The meeting is open to the public and will be held in the Montgomery Room I & II at the Guest Quarters Suites Hotel located at 7335 Wisconsin Avenue, Bethesda, Maryland, 20814. Public registration will begin one half hour prior to the beginning of the meeting on each day.

Thursday, November 8, 1990 from 9 a.m. to 5 p.m. and Friday, November 9, 1990 from 9 a.m. to 1 p.m. The meeting is open to the public and will be held in the Amphitheater of Scripps Clinic and Research Foundation located at 10666 North Torrey Pines Road, La Jolla, California, 92037. Public registration will begin at 8:30 a.m. each day.

Foods & Veterinary Medicine

Thursday, September 6, 1990 from 9 a.m. to 5 p.m. and Friday, September 7, 1990 from 9 a.m. to 1 p.m. The meeting is open to the public and will be held in Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC 20201. Public registration will begin at 8:30 a.m. each day.

Thursday, October 25, 1990 from 9 a.m. to 5 p.m. The meeting is open to the public and will be held in Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC, 20201. Public registration will begin at 8:30 a.m.

Devices, Radiological Products, and Biomedical Research

Monday, October 15, 1990 from 9 a.m. to 5 p.m. and Tuesday, October 16, 1990 from 9 a.m. to 1 p.m. The meeting is open to the public and will be held in Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC 20201. Public registration will begin at 8:30 a.m. each day.

Tuesday, November 13, 1990 from 9 a.m. to 5 p.m. The meeting is open to the public and will be held in the Humphrey Auditorium on the first floor of the Humphrey Building located at 200 Independence Avenue, SW., Washington, DC 20201. Public registration will begin at 8:30 a.m.

The purpose of these meetings is to allow for public comments by invitation and to enable the subcommittee members to formulate specific findings in the areas of their formal charge.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) has appointed an Advisory Committee on the Food and Drug Administration (the Committee) to examine the agency's mission, responsibilities, and structure. The Committee, as part of its deliberations process, has solicited written public comment on four central questions relating to FDA's overall mission and whether FDA's energies and resources are focused on the right objectives.

The Committee will be utilizing the subcommittee meetings to analyze these public comments. The subcommittees in each of these meetings will be focusing on the following crosscutting topics and developing findings papers for presentation to the full Committee in a meeting to be held in December. The four general issues for discussion at these meetings will be: Leadership; management systems; Agency effectiveness and independence; and, resources.

The Committee will hear from selected members of the general public who responded to a **Federal Register** notice published July 3.

Dated: August 1, 1990.

Eric M. Katz,

Executive Secretary, Advisory Committee on the FDA.

[FR Doc. 90–18423 Filed 8–6–90; 8:45 am]

BILLING CODE 4160–07–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–90–3133]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for reivew, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer,

Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposl for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Survey Instructions and Certificate.

Office: Housing.

Description of the Need for the Information and its Proposed Use: A survey and a surveyor's certificate are necessary to assure an exact description of the property to be mortgaged. Form FHA–2457 provides instructions for the preparation of the survey and a certificate for signature of a registered engineer or surveyor.

Form Number: FHA–2457.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
FHA–2457	2,000		1		.5		1,0000

Total Estimated Burden Hours: 1,000.

Status: Extension.

Contact: Richard E. Murray, HUD, (202) 708–0743, Scott Jacobs, OMB, (202) 395–6880.

Dated: July 31, 1990.

[FR Doc. 90–18396 Filed 8–6–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3132]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for reivew, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C chapter 35)

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 17, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Background Data on Request for Assignment of Mortgage to HUD.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Form HUD–92206 will supply information needed to evaluate a homeowner's eligibility under the Department's Home Mortgage Assignment Program. The mortgage company will complete the form when a homeowner is being considered for an assignment.

Form Number: HUD–92206.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: HUD–92206.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-92206	11,000		5		.5		27,500

Total Estimated Burden Hours: 27,500.
Status: Extension.
Contact: Thomas Hitchcock, HUD, (202) 708–3664, Scott Jacobs, OMB, (202) 395–6880.

Dated: July 17, 1990.

[FR Doc. 90–18397 Filed 8–6–90; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board Appointment

AGENCY: Department of the Interior.

ACTION: Notice of appointment of an additional member to the performance review board and change of chairperson.

SUMMARY: This notice provides the name of an additional individual who has been appointed to serve as a member of one of the Department of the Interior Performance Review Boards. Also, there is a change in the person who will serve as Chairperson of that Board. The entire Assistant Secretary for Fish and Wildlife and Parks Performance Review Board is listed which includes the name of the additional member and the new Chairperson of the Board. The publication of these appointments are required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1800 C Street, NW., Washington, DC 20240, Telephone Number: 208–6761.

Department of the Interior Performance Review Board As of July 27, 1990

Assistant Secretary for Fish and Wildlife and Parks

S. Scott Sewell (NC), Chairperson
Joseph E. Doddridge (CA)
Knute Knudson (NC) (added)
John M. Morehead (CA)
Robert Stanton (CA)
Joseph S. Marler (CA)
Jay L. Gerst (CA)
Lorraine Mintzmyer (CA)

Dated: August 1, 1990.

For the Executive Resources Board:

R. Thomas Weimer,
Chief of Staff.

[FR Doc. 90–18377 Filed 8–6–90; 8:45 am]
BILLING CODE 4310–10–M

Bureau of Land Management

[AZ–050–0–4212–11; AZA–24620]

Arizona; Mohave County, Realty Action, Lease of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—lease of lands, Mohave County, Arizona.

SUMMARY: The following described lands have been examined and found suitable for classification and lease under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 et seq.).

Gila and Salt River Meridian, Arizona

T. 20 N., R. 22 W.,
Sec. 20, portion of lot 1.
Containing 52.00 acres more or less.

Mohave Union High School District No. 30 has held a public purpose lease to the subject lands issued under Bureau of Reclamation authority. This action will convert the existing lease to a R&PP lease issued under the authority of the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.).

In addition, all interests held by the Mohave Union High School District No. 30 will be transferred to the Colorado River Union High School District commensurate with converting this lease.

The land is not required for any Federal purpose. The classification and subsequent lease are consistent with the Bureau's planning for the area.

Upon publication of this Notice of Realty Action in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease under the R&PP Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments to the District Manager, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365. Any objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, the classification will become effective 60 days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

Dated: July 31, 1990.

Herman L. Kast,
District Manager.

[FR Doc. 90–18387 Filed 8–6–90; 8:45 am]
BILLING CODE 4310–32–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Republication and Availability of Species Lists

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Document Availability.

SUMMARY: The Service announces the republication and availability of the current Lists of Endangered and Threatened Wildlife and Plants found at 50 CFR 17.11 and 17.12.

DATES: The republished lists contain all changes through April 15, 1990.

ADDRESSES: Requests for copies should be addressed to the Publications Unit, U.S. Fish and Wildlife Service, 130–ARLSQ, Washington DC 20240 or (703/358–1706).

FOR FURTHER INFORMATION CONTACT: Dr. Larry Shannon, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 452–ARLSQ Washington, DC 20240 (703/358–2171).

SUPPLEMENTARY INFORMATION: The Service has incorporated into a separate reprint all changes through April 15, 1990 to the lists at 50 CFR 17.11 and 17.12 published since the October 1, 1989 compilation of that title. In addition, minor changes or corrections to the spellings of names, historic ranges, and special rules applicable to a particular entry in the table and found elsewhere in this title have been incorporated in this special reprinting of these lists. Otherwise, no entry in these lists has

been significantly affected. The document also contains a list of the species that have been entirely removed from 17.11 or 17.12 since 1973. The 36 page unit is available from the Publications Unit (address above).

Dated: July 31, 1990.

Richard N. Smith

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-18383 Filed 8-6-90; 8:45 am]

BILLING CODE 4310-55-M

Notice of Public Hearings on Draft Long-Range Plan of the Klamath River Restoration Program

AGENCY: Department of the Interior.

ACTION: Notice of extension to the comment period.

SUMMARY: This notice announces extension of the public comment period which appeared in the **Federal Register** on July 19, 1990 (55 FR 29431). The period for written comments on the Draft Long-Range Plan of the Klamath River Restoration Program is extended from August 10, 1990 to September 15, 1990. Written comments may be sent to Ronald A. Iverson, U.S. Fish & Wildlife Service, Klamath Field Office, P.O. Box 1006, Yreka, CA 96097. Public hearings information and location of the plan document remain unchanged.

Dated: July 27, 1990

William E. Martin,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 90-18388 Filed 8-6-90; 8:45 am]

BILLING CODE 4320-55-M

Notice of Public Scoping Session on Inclusion of the Upper Klamath River Basin in the Long Range Plan of the Klamath River Restoration Program

AGENCY: Department of the Interior.

ACTION: Notice of public scoping session.

SUMMARY: This notice announces the public scoping session regarding inclusion of the Upper Klamath River Basin in the long range plan (Plan) of the Klamath River Restoration Program, a 20 year program to restore anadromous fish populations and habitats of the Klamath River Basin, California and Oregon. The Plan presently focuses on restoration of anadromous fishes to the Klamath River below Iron Gate Dam. Upon completion of an Upper Basin amendment, the Plan will also address restoration problems and goals for the Upper Klamath River Basin. The Klamath Falls meeting is intended to allow members of the public to provide information and suggest problems and issues to be dealt with in extending the scope of the Plan to include the Upper Basin. The public is also invited to comment on the present review draft of the Plan, which was distributed in June, 1990. Draft copies of the Plan have been distributed to agencies, Tribes, libraries, and interested groups. Persons wishing to review the Plan may do so at locations listed below under **ADDRESSES.** Members of the Klamath River Basin Fisheries Task Force, an advisory committee providing guidance on conduct of the Restoration Program, will attend the scoping session to hear comments. Public comment is invited. Written comments may be sent to the address indicated below under **FOR FURTHER INFORMATION CONTACT.**

DATES: The Public Scoping Session will be held at 7 p.m. on Monday, August 13, 1990.

PLACE: The meeting will be held at Molitore's Restaurant, 100 Main Street, Klamath Falls, Oregon.

ADDRESSES: Copies of the complete plan document are available for review at the following locations, during normal business hours: Libraries: Siskiyou County Public Library, 719 4th Street, Yreka, CA; Trinity County Public Library, 229 Main, Weaverville, CA; Humboldt County Public Library, 421 "I" Street, Eureka, CA; Del Norte County Public Library, 190 Price Mall, Crescent City, GA; Klamath County Public Library, Klamath Falls, OR; Happy Camp Branch Library, 143 Buckhorn Road, Happy Camp, CA; Orleans Elementary School Library, Orleans, CA; Weitchpec Store, Weitchpec, CA; Humboldt State University Library, Arcata, CA; Southern Oregon State College Library, Ashland, OR. Federal Offices: U.S. Fish & Wildlife Service, Klamath Field Office, 1030 South Main, Yreka, CA; U.S. Fish & Wildlife Service, Trinity Field Office, #3 Horseshoe Square, Weaverville, CA; U.S. Fish & Wildlife Service, 1125 16th Street, Room 209, Arcata, CA; Six River National Forest, 500 5th Street, Eureka, CA; Gasquet Ranger District, Gasquet CA; Orleans Ranger District, Orleans, CA; Lower Trinity Ranger District, Willow Creek, CA; Mad River Ranger District, Bridgeville, CA; Klamath National Forest Headquarters, 1312 Fairlane Road, Yreka, CA; Oak Knoll Ranger District, 22541 Highway 96, Klamath River, CA; Happy Camp Ranger District, Happy Camp, CA; Salmon River Ranger District, Etna, CA; Scott River Ranger District, Fort Jones, CA; Goosenest Ranger District, Orleans, CA; Klamath National Wildlife Refuge, Tulelake, CA; U.S. Fish & Wildlife Service, Regional Office, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR. Other Government Offices: California Department of Fish & Game, 601 Locust Street, Redding, CA; Hoopa Valley Business Council, Hoopa, CA; Yurok Transition Team, 517 Third Street, #18, Eureka, CA; Klamath Tribal Office, Old Williamson Business Park, Hwy 97, Chiloquin, OR; Karuk Tribal Office, 746 Indian Creek Road, Happy Camp, CA.

FOR FURTHER INFORMATION CONTACT: Ronald A. Iverson, U.S. Fish & Wildlife Service, Klamath Field Office, P.O. Box 1006, Yreka, CA, 96097. Phone 916/842-5763.

SUPPLEMENTARY INFORMATION: For further information on the Klamath River Basin Conservation Area Restoration Program, see 16 U.S.C. 460ss-ss6 (the "Klamath Act").

Dated: July 24, 1990.

William E. Martin,

Regional Director, U.S. Fish & Wildlife Service.

[FR Doc. 90-18389 Filed 8-6-90; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Boundary Change; Sleeping Bear Dunes National Lakeshore

AGENCY: National Park Service, Interior

ACTION: Notice boundary change.

The boundary of Sleeping Bear Dunes National Lakeshore, authorized October 21, 1970, 84 Stat. 1075; and amended October 22, 1982, 96 Stat 1720; was revised in the **Federal Register**, January 4, 1985 (50 FR 552) to include approximately 115 acres pursuant to authority contained in the Act of June 10, 1977, 91 Stat. 211, as amended, 16 U.S.C. 460*l*-9(c); and corrected December 22, 1988 (53 FR 246).

Notice is hereby given that pursuant to section 7(c)(i) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (Pub. L. 95-42, 91 Stat. 210), and the Act of March 10, 1980 (Pub. L. 96-203, 94 Stat. 81), 16 U.S.C. 460*l*-9(c), the following minor revisions are made to the boundaries of Sleeping Bear Dunes National Lakeshore:

Relocate the Boundary

To follow actual National Park Service ownership on the southern edge of Empire.

Tract 12-102

The boundary line to be moved south 20.28 feet between Lake Street and

Wood Street for approximately 614 feet near National Park Service monuments C4 and C6, resulting in the deletion of 0.29 acre.

Tract 20–178

Delete 35,061 square feet (0.80 acre). The description of the area being deleted follows: That part of Government Lot 2, Section 34, Town 29 North, Range 14 West, more fully described as follows: Commencing at the West quarter corner of said Section 34; thence along the East and West quarter line, S 88°41'05" E, 1228.71 feet; thence N 16°27'50" E, 21.92 feet; thence S 88°16'10" E, 363.41 feet; thence along the center line of State Highway M–22, N 17°46'00" E, 1051.89 feet; thence N 72°12'50" W, 228.69 feet; thence N 02°32'45" E, 230.96 feet; thence along the Northerly line of said Government Lot 2, N 89°29'30" W, 236.20 feet to the Point of Beginning; thence S 09°32'00" W, 131.65 feet; thence N 80°19'35" W, 335.14 feet; thence N 09°33'45" E, 77.64 feet; thence along the Northerly line of said Government Lot 2, S 890°29'30" E, 339.28 feet to the Point of Beginning. Containing 0.80 acre.

Relocate the Boundary

To include lands already purchased by the National Park Service as uneconomic remnants. The lands are described as follows:

Tract 09–156

All that certain tract or parcel of land lying and being situate in Section 26, Township 27 North, Range 15 West, Michigan Meridian, Benzie County, Michigan, more particularly described as follows: That part of the Northwest quarter of the Southwest Quarter of said Section 26 which lies Southerly of a line which is 500.00 feet South of and parallel to the Southerly right-of-way line of Michigan State Highway M–22. Excepting from the above described tract of land the East 495 feet thereof and also excepting the South 330 feet thereof. The tract of land herein described contains 6.96 acres more or less.

Tract 09–157

All that certain tract or parcel of land lying and situate in Section 26, Township 27 North, Range 15 West, Michigan Meridian, in the county of Benzie, Michigan, being more particularly described as follows: That part of the East 495.00 feet of the Northwest Quarter of the Southwest Quarter of Section 26 lying Southerly of a line which is 500.00 feet South of and parallel to the Southerly right-of-way line of Highway M–22. Containing 7.10 acre of land, more or less.

Relocate the Boundary

To include land being acquired by eminent domain by the National Park Service as an uneconomic remant.

Tract 02–158

A tract of land lying partly in Section 27 and partly in Section 28, Township 27 North, Range 15 West, Michigan Meridian, Benzie County, Michigan, more particularly described as follows: A tract of land described as beginning at the Northwest corner of Lot 18 of Houck's Birch Trail No. 3 subdivision plat; thence, North 49 degrees 26 minutes 30 seconds East 310 feet; thence, North 33 degrees 25 minutes West 167.40 feet; thence, North 15 degrees 33 minutes West 618.48 feet; thence, North 13 degrees 48 minutes West 473.31 feet to the Southwest corner of Lot 38 in said Plat of Houck's Birch Trail No. 3; thence, South 50 degrees 40 minutes West 178.18 feet; thence, North 39 degrees 20 minutes West 276.61 feet to the southeasterly line of State Highway M–22; thence, Southwesterly along said Southeasterly line 725 feet; thence, Southeaterly to the point of beginning;

Excepting Therefrom that part of said tract lying Northwesterly of a line, said line being parallel with and 500.00 feet Southeasterly of the Southeast right-of-way line of State Highway M–22, containing 12.20 acres, more or less. The maps depicting the changes are available to the public for inspection at the following addresses:

Director, National Park Service, 1100 L Street, NW., P.O. Box 37127, Washington, DC 20013–7127.

Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

Superintendent, Sleeping Bear Dunes National Lakeshore, Box 277, 9922 Front Street, Empire, Michigan 49630.

Dated: March 12, 1990.

Don H. Castleberry.

Regional Director, Midwest Region.

[FR Doc. 90–18322 Filed 8–6–90; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places, Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 28, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 22, 1990.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Houston County

Dothan Municipal Light and Water Plant, 126 M. College St., Dothan, 90001315

Jefferson County

Dr. Pepper Syrup Plant, 2829 Second Ave., S., Birmingham, 90001317

Perry County

Kenworthy Hall, AL 14, W of Marion, Marion vicinity, 90001318

Talladega County

Talladega College Historic District, Jct. of Battle St. and Martin Luther King Dr., Talladega, 90001316

COLORADO

El Paso County

Colorado Springs Airport, Jct. of Ent Ave. and Peterson Blvd. (Peterson Air Force Base), Colorado Springs vicinity, 90001296

CONNECTICUT

Hartford County

Beach, Charles E., House 18 Brightwood Ln., West Hartford, 90001287

Litchfield County

Bissell, Henry B., House, 202 Maple St., Litchfield, 90001288

New London County

Jordan Village Historic District, Jct. of North Rd. and Avery Ln. with Rope Ferry Rd., Waterford, 90001289

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Meeting House of the Friends Meeting of Washington, 2111 Florida Ave., NW., Washington, 90001294

Pierce Still House, 2400 Tilden St., NW., Washington, 90001295

IOWA

Buena Vista County

Illinois Central Passenger Depot—Storm Lake (Advent & Development of Railroads in Iowa, 1855–1940, MPS), S. of W. Railroad St., between Lake and Michigan Aves., Storm Lake, 90001300

Carroll County

American Express Building—Carroll (Advent & Development of Railroads in Iowa, 1855–1940, MPS), Jct. of N. West and W. Fifth Sts., Carroll, 90001299

Chicago & Northwestern Passenger Depot and Baggage Room—Carroll (Advent & Development of Railroads in Iowa, 1855–1940, MPS), Jct. N. West and W. Fifth Sts., Carroll, 90001302

Cherokee County

Illinois Central Railroad Yard—Cherokee (Advent & Development of Railroads in Iowa, 1850–1940, MPS), Roughly bounded by S. Fourth, Fifth, W. Maple, and W. Beech Sts., Cherokee, 90001308

Hardin County

Illinois Central Combination Depot—Ackley (Advent & Development of Railroads in Iowa, 1855–1940, MPS), N. of Railroad St., between State and Mitchell Sts., Ackley, 90001303

Iowa Falls Union Depot (Advent & Development of Railroads in Iowa, 1855–1940, MPS), E. Rocksylvania Ave. and Depot St., Iowa Falls, 90001305

Mills Tower Historic District (Advent & Development of Railroads in Iowa, 1855–1940, MPS), E. Rocksylvania Ave. ⅓ mi. E. of Freight House, Iowa Falls, 90001304

Page County

Wabash Combination Depot—Shenandoah (Advent & Development of Railroads in Iowa, 1855–1940, MPS), Jct. Ferguson Rd. and Burlington Northern Tracks, Shenandoah, 90001298

Webster County

Illinois Central Freight House and Office Building—Fort Dodge (Advent & Development of Railroads in Iowa, 1850–1940, MPS), Jct. of 4th St. and 4th Ave., S., Fort Dodge, 90001306

Illinois Central Passenger Depot—Fort Dodge (Advent & Development of Railroads in Iowa, 1850–1940, MPS), Jct. of Fourth St., and Fourth Ave., S., Fort Dodge, 90001307

Woodbury County

Chicago, Milwaukee, St. Paul & Pacific Combinatin Depot—Hornick (Advent & Development of Railroads in Iowa, 1850–1940, MPS), Main St., S. of Railway St., Hornick, 90001309

MARYLAND

Prince George's County

Mount Rainier Historic District, Roughly bounded by Arundel St., 37th St., Bladensburg Rd. and Eastern Ave., Mount Rainier, 90001319

NEW JERSEY

Camden County

Broadway Trust Company (Banks, Insurance, and Legal Buildings in Camden, New Jersey (1873–1938) MPS), 938–944 Broadway, Camden 90001284

Building at 525 Cooper St. (Banks, Insurance, and Legal Buildings in Camden, New Jersey (1873–1938) MPS), 525 Cooper St., Camden, 90001286

First Camden National Bank & Trust (Banks, Insurance, and Legal Buildings in Camden, New Jersey (1873–1938) MPS), Jct. of Broadway and Cooper St., Camden 90001285

Smith—Austermuhl Insurance Co. (Banks, Insurance, and Legal Buildings in Camden, New Jersey (1873–1938) MPS), NW Corner of 5th and Market Sts., Camden 90001301

NEW YORK

Jefferson County

Angell Farm, (Lyme MRA), S. Shore Rd., Chaumont vicinity, 90001321

Cedar Grove Cemetery, (Lyme MRA), Washington St., Chaumont, 90001324

Chaumont Grange Hall and Dairymen's League Building, (Lyme MRA), Main St., Chaumont, 90001337

Chaumont Historic District (Lyme MRA), Along Main St., roughly between Washington and Church Sts., Chaumont, 90001336

Chaumont House, (Lyme MRA), Main St., Chaumont, 90001341

Chaumont Railroad Station, (Lyme MRA), Main St., Chaumont, 90001332

District School No. 3, (Lyme MRA), Jct. NY 3 and County Rd. 57, Putnam Corners, Chaumont vicinity, 90001326

Evans, Gaige, Dillenback House, (Lyme MRA), Evans Rd., Chaumont, 90001340

George Brothers Building, (Lyme MRA), Mill St., Chaumont, 90001334

George House, (Lyme MRA), Washington St., Chaumont, 90001338

Getman Farmhouse (Lyme MRA), S. Shore Rd., Chaumont vicinity, 90001322

Lance Farm, (Lyme MRA), S. Shore Rd., Chaumont vicinity, 90001323

Point Salubrious Historic District, (Lyme MRA), Point Salubrious Rd., Chaumont vicinity, 90001339

Row, The (Lyme MRA), Main St. at Shaver Creek, Three Mile Bay, Chaumont vicinity, 90001329

Stone Shop, Old, (Lyme MRA), Main St., Three Mile Bay, Chaumont vicinity, 90001328

Taft House, (Lyme MRA), Main St., Three Mile Bay, Chaumont vicinity, 90001297

Taft House, (Lyme MRA), Main St., Three Mile Bay, Chaumont vicinity, 90001335

Taylor Boathouse, (Lyme MRA), Bay View Dr., Three Mile Bay, Chaumont vicinity, 90001330

Three Mile Bay Historic District,(Lyme MRA), Jct. of Church and Depot Sts., Three Mile Bay, Chaumont vicinity, 90001327

Union Hall, (Lyme MRA), S. Shore Rd., Chaumont vicinity, 90001333

United Methodist Church, (Lyme MRA), S. Shore Rd., Chaumont vicinity, 90001325

Wilcox Farmhouse, (Lyme MRA), Carrying Place Rd., Three Mile Bay vicinity, 90001331

NORTH CAROLINA

Alamance County

Downtown Burlington Historic District, Roughly bounded by Morehead, S. Main, Davis, S. Worth, E. Webb and Spring Sts., Burlington, 90001320

Buncombe County

Downtown Asheville Historic District (Boundary Increase II) (Asheville Historic and Architectural MRA), Church St. and Ravenscroft Dr., Asheville, 90001342

Johnston County

Hood—Strickland House, 415 S. 4th St., Smithfield, 90001310

McDowell County

Artz, Welsford Parker, House, 205 Maple St., Old Fort, 90001311

Macon County

Brabson, Dr. Alexander C., House, SR 1118, 0.6 mile S. of jct. with SR 1115, Otto vicinity, 90001312

Mecklenburg County

Addison Apartments, 831 E. Morehead St., Charlotte, 90001314

Pitt County

Lang, Robert J., Jr., House, SR 1231, 0.1 mile S. of jct. with SR 1200, Fountain vicinity, 90001313

OHIO

Montgomery County

Emmanuel's Evangelical Lutheran Church, (Pennsylvania German Churches of Ohio MPS), 30 W. Warren St., Germantown, 90001292

Jacob's Church, (Pennsylvania German Churches of Ohio MPS), 213 E. Central Ave., Miamisburg, 90001290

Salem Bear Creek Church, (Pennsylvania German Churches of Ohio MPS), Roughly bounded by Union Rd., Dayton Germantown Pike, and Bear Creek, Germantown, 90001291

PENNSYLVANIA

Chester County

Downing, Hunt, House (Boundary Decrease) (West Whiteland Township MRA), 600 W. Lincoln Hwy., Exton vicinity, 90001343

TEXAS

Harris County

Mash, William R., House, 215 Westmoreland Ave., Houston, 90001293

The following property was omitted from the pending list dated August 1, 1990:

Holland Reformed Protestant Dutch Church Ottawa County, MI

[FR Doc. 90–18435 Filed 8–6–90; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten

days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, John H. Elgin, (703) 875–1608, IRM/PE, Room 1100B, SA–14, Washington, DC 20523–1407.

Date Submitted: July 27, 1990.

Submitting Agency: Agency for International Development.

OMB Number: 0412–0532.

Form Numbers: AID 1382–9, 1382–11, 1382–11A, 1382–13.

Type of Submission: Renewal.

Title: Training Cost Analysis (TCA) System.

Purpose: The Agency for International Development (A.I.D.) provides training in the U.S. for well over 15,000 students each year from Third World Countries. These "A.I.D. Participants" and their training programs are managed by 200 contractors. Contracts are let by A.I.D. Missions overseas, central and regional bureaus in Washington, DC, and the Office of International Training. The Agency has now developed a project management system which will standardize most aspects of the participant training process, including the definition of training activities to be provided by contractors for A.I.D. Participants; the submission of cost proposals in response to an RFP which identifies the costs of those services; and a cost reporting system which enables project managers to assure that contractors are keeping within their proposed budgets. Respondents to an RFP will have a submission burden of one and a contractor will have an annual submission burden of four.

Reviewer: Marshall Mills (202) 395–7340, Office of Management and Budget, Room 3201, New Executive Office Building, Washington, DC 20503.

Dated: July 27, 1990.

Wayne H. Van Vechten,

Planning and Evaluation Division.

[FR Doc. 90–18384 Filed 8–6–1990; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6; Sub-No. 323X]

Burlington Northern Railroad; Abandonment Exemption—in Jasper County, MO

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 1.40-mile line of railroad between milepost 332.85, near J & G Jct., and milepost 334.25, near Perkins Street in Joplin, Jasper County, MO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 6, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 17, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 27, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 10, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 1, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–18436 Filed 8–6–90; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon a possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; F.B. Purnell Sausage Co., Inc.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *F.B. Purnell Sausage Co., Inc.*, has been lodged with the United States District Court for the Eastern District of Kentucky. That action was brought pursuant to the Clean Water Act for violations of the discharge limitations included in the federal permit issued to the Purnall Sausage Company.

The consent decree requires that Purnell Sausage upgrade and expand its wastewater treatment plant so that it will meet the terms of its wastewater discharge permit issued by the Commonwealth of Kentucky. The plant must be constructed by August 1, 1990, and the final permit limits must be met by October 1, 1991. Until that time, Purnell must meet interim standards regulating its discharge or pay stipulated penalties for such violations. In addition, Purnell will pay a $125,000 civil penalty to the United States.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources

Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Purnell Sausage Co.*, D.J. Ref. 90–5–1–1–2779.

The proposed consent decree may be examined at the office of the United States Attorney, Post Office and Courthouse Building, Covington, Kentucky 41012, and at the Region IV Office of the U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20044, (202) 347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy of the consent decree, please enclose a check in the amount of $5.75 for copying costs ($0.25 per page) payable to "Consent Decree Library."

George W. Van Cleve,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–18386 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 90–3]

Kenneth Behymer, M.D., Anchorage, AK

Notice is hereby given that on December 1, 1989, the Drug Enforcement Administration, Department of Justice, issued to Kenneth Behymer, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke DEA Certificate of Registration, AB8645028, and deny any pending application for renewal of such registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on August 21, 1990, commencing at 8:30 a.m., at the Supreme Court and Court of Appeals, District Court Building, 303 K Street, Courtroom 5, 2nd floor, Anchorage, Alaska.

Dated: July 31, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90–18430 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–25]

Bluestone Drug Store Pittsburgh, PA; Hearing

Notice is hereby given that on March 23, 1990, the Drug Enforcement Administration, Department of Justice, issued to Gerald M. Bluestone, R.Ph., d/b/a Bluestone Drug Store, an Order to Show Cause as to why the Drug Enforcement Administration should not immediately suspend DEA Certificate of Registration, AB1112135, and deny any pending applications for renewal of registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on August 9, 1990, commencing at 9:30 a.m., at the U.S. District Court, William Moorehead Federal Building, 1000 Liberty Avenue, Room 2401, Pittsburgh, Pennsylvania.

Dated: July 31, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90–18431 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–24]

DePietro Pharmacy, Peckville, PA; Hearing

Notice is hereby given that on March 26, 1990, the Drug Enforcement Administration, Department of Justice, issued to DePietro Pharmacy, an Order to Show Cause as to why the Drug Enforcement Administration should not deny application for DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on August 30, 1990, commencing at 9:30 a.m., at the Drug Enforcement Administration, 600 Army Navy Drive, Room E–2103, Arlington, Virginia.

Dated: July 31 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90–18432 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–17]

Farone Drugs, New Castle, PA; Hearing

Notice is hereby given that on February 8, 1990, the Drug Enforcement Administration, Department of Justice, issued to Farone Drugs, an Order to Show Cause as to why the Drug Enforcement Administration should not deny application for DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on August 7, 1990, commencing at 9:30 a.m., at the U.S. District Court, William Moorehead Federal Building, 1000 Liberty Avenue, Room 2401, Pittsburgh, Pennsylvania.

Dated: July 31, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administration.

[FR Doc. 90–18433 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–38]

Vincent A. Sundry, D.O., Tarpon Springs, FL; Hearing

Notice is hereby given that on April 16, 1990, the Drug Enforcement Administration, Department of Justice, issued to Vincent A. Sundry, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not deny pending application for DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on September 10, 1990, commencing at 11 a.m., at the Drug Enforcement Administration, 600 Army Navy Drive, Room E–2103, Arlington, Virginia.

Dated: July 21, 1990.

Terrence M. Burke,

Acting Administrator, Drug Enforcement Administarion.

[FR Doc. 90–18434 Filed 8–6–90; 8:45 am]

BILLING CODE 4410–09–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-250-OLA-5 & 50-251-OLA-5]

Assignment of Atomic Safety and Licensing Appeal Board; Florida Power and Light Co. (Turkey Point Plant, Unit Nos. 3 and 4)

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding: Thomas S. Moore, Chairman, Howard A. Wilber, G. Paul Bollwerk, III.

Dated: August 1, 1990.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 90-18418 Filed 8-6-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-424-OLA and 50-425-OLA, ASLBP No. 90-617-03-OLA]

Establishment of Atomic Safety and Licensing Board; Georgia Power Co. et al.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Georgia Power Company, et al.

Vogtle Electric Generating Plant, Units 1 and 2 Facility Operating License Nos. NPF-68 and NPF-81

This Board is being established pursuant to a notice published by the Commission on June 22, 1990, in the **Federal Register** (55 FR 25756) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendments would revise Technical Specification 4.8.1.1.2h(6)(c) to the license to permit Licensee to install a modification to manually bypass the high jacket water temperature (HJWT) trip for all emergency starts of the emergency diesel generator.

The Board is comprised of the following administrative judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Emmeth A. Luebke, 5500 Friendship Boulevard, Apt. 1923N, Chevy Chase, MD 20815.

All correspondence, documents and other materials shall be filed with the Judges in accordance with 10 CFR 2.701.

Issued at Bethesda, Maryland, this 1st day of August 1990.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 90-18419 Filed 8-6-90; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-28290; File No. SR-CBOE-90-08]

Self-Regulatory Organizations; Filing of Amendments 1 and 2 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Trading in Stocks, Warrants, and Securities Other Than Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") has filed with the Securities and Exchange Commission ("Commission") Amendments No. 1 and 2 to a proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Amendment No. 1 to the proposed rule change was filed by the CBOE on June 19, 1990, and Amendment No. 2 was filed on July 30, 1990. The Commission is publishing this notice to solicit comments on the amendments to the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE previously has proposed rules relating to the trading of stocks, warrants, and securities instruments and contracts other than options of the Exchange in File No. SR-CBOE-90-8.[1] The Exchange is proposing two amendments to this rule filing. The exact text of Amendments Number 1 and 2 is available at the CBOE and the Commission at the address noted in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the propsoed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE previously has filed rules with the Commission that would authorize the trading on the Exchange of stocks, warrants, and other securities instruments and contracts, on either a listed or unlisted basis, in File No. SR-CBOE-90-8. Those rules, which are presently pending before the Commission, would add a new Chapter XXX to the rules of the Exchange and generally would supplement CBOE's existing rules in Chapters I through XIX with respect to stocks, warrants, and other securities. Amendments Number 1 and 2 amend the rules set forth in File No. SR-CBOE-90-8 in certain minor respects, as described below.

a. Amendment No. 1

Rule 6.5, relating to the Letters of Guarantee that must be obtained by each Market-Maker trading on the floor of the Exchange, is proposed to be amended to permit a Market-Maker to obtain separate Letters of Guarantee for the different types of securities that are to be traded subject to the rules in Chapter XXX.

Rule 30.41, relating to Market-Maker margin requirements, is proposed to be amended to describe with greater specificity the positions in members' accounts that may be carried on a margin basis that is satisfactory to the member and the carrying broker. Among other things, revised Rule 30.41 will provide "good faith" margin treatment for positions in SuperShares and

[1] *See* Securities Exchange Act Release No. 28015 (May 14, 1990), 55 FR 21280 (May 23, 1990).

SuperUnits where a CBOE member makes a market in SuperShares.[2]

Proposed Rule 30.50, relating to doing business with the public, is proposed to be amended by the addition of a new paragraph (h) governing the supervision of customer accounts. As previously proposed by CBOE, Rule 30.50(h) would have made the supervision standards of existing CBOE Rule 9.8 applicable to the trading of stocks and other securities. Among other things, Rule 9.8 requires member organizations to appoint Senior Registered Options Principals and Compliance Registered Options Principals to perform certain of the supervisory functions contemplated by that Rule. If the provisions of Rule 9.8 were to apply to securities other than options, CBOE member organizations that currently assign responsibility for the supervision of stock and other non-options transactions to employees that are not "options-qualified" would be required to reassign personnel and realign their internal procedures before accepting customer orders for the trading of stock and other securities other than options on CBOE. The Exchange has accordingly adopted amendments to Rule 30.50 that will specify appropriate supervisory standards for the securities traded subject to the rules in chapter XXX but which will not require the appointment of an Options Principal.

Rule 30.50(b) provides that, unlike a member organization, individual members of the Exchange may not transact business with the public. Rule 30.50.01 is proposed to be amended accordingly to delete an inappropriate reference to an individual member's obligations in respect of certain transactions in currency warrants. Interpretation and Policy .01 also would be amended to provide that where a member organization effects a transaction in currency warrants for a customer whose account has not been approved pursuant to CBOE Rule 9.7, the member organization should carefully determine that such warrants are not unsuitable for the customer. This change conforms the standard for the suitability of transactions in currency warrants to the standard that applies to recommended option transactions and to the standard proposed for index warrants.

Interpretations and Policies .01 and .02 to Rule 30.50, which previously have been proposed by CBOE in connection with its rules relating to the trading of stocks and warrants, also are proposed to be amended to refer to "customers" rather than "investors." These changes merely conform those provisions to the terminology elsewhere used in the rules of the Exchange; no substantive change is intended.

CBOE previously has submitted for Commission approval rules which establish listing standards and procedures. The Exchange now is proposing to amend Rule 31.5 to raise from $3 to $5 per share the minimum price of publicly held shares proposed to be listed for trading on the Exchange.[3] The Exchange also is proposing to amend Rule 31.12, which relates to the quorum required for shareholder action.

b. Amendment No. 2

The Exchange is amending proposed Rule 4.7(b), relating to manipulative operations, to provide explicitly that the list of prohibited activities set forth therein is non-exclusive and that other, non-enumerated types of conduct nonetheless may be within the scope of that prohibition. The Exchange also is deleting a reference in that Rule to "member organizations." Section 1.1(b) of CBOE's Constitution and CBOE Rule 1.1(a) provide that the term "member" refers to both individual members and member organizations. This latter change to Rule 4.7(b), therefore, merely conforms the terminology in that proposed Rule to the usage employed elsewhere in the rules of the Exchange.

Proposed Rule 6.3(a)(iii), relating to trading halts in securities other than stock options, presently provides that Floor Officials may consider whether trading in a security other than a stock option has been halted or suspended in another market. The rules of other self-regulatory organizations generally focus on whether trading has been halted in the primary market for that security, and Rule 6.3 is being amended so to provide.

As submitted previously to the Commission, Interpretation and Policy .06 to Rule 6.61 would have allowed a member up to five business days in which to close out trades that could not be successfully compared. CBOE believes that it is appropriate to accelerate the trade comparision process and to require all trades that have not been successfully compared and matched to be closed out by no later than the close of business on the business day after the trade date (T+1). This, in turn, requires the adjustment of certain of the time limits for the comparison of questioned and unknown trades, and Interpretations and Policies .06 to Rule 6.61 have been amended accordingly.

Rule 10.12, relating to the closing out of trades that have not been timely settled, is being amended to correct an inadvertent omission. As revised, the Rule will provide that the closing of a contract does not preclude a member organization from taking action to recover damages resulting from the failure of the opposite party to deliver or receive the securities in question.

Rule 30.11, relating to the dissemination of securities quotations, has been clarified in a number of minor respects. Specifically, paragraph (a) Has been amended to make clear that CBOE will disseminate bid and offer quotations reflected in the public order book when the bid or offer in the book is better than the market bid or offer, as well as when any such bid or offer is equal to the market bid or offer. Paragraph (b) of that Rule is being amended similarly to provide that disseminated quotations can be superseded by bids or offers on the public order book.

Paragraph (e) of Rule 30.11 is amended to make clear that a member that reduces the size of its quoted bid or offer remains obligated up to the amount of the revised quote. Rule 30.11(g) is amended to add a reference to new Rules 30.21 and 30.22, relating to odd-lot transactions. Finally, new Interpretation and Policy .01 to Rule 30.11 establishes criteria and procedures for the invocation of the "unusual market" exception to Rule 11Ac1–1 under the Act (the "Quote Rule").

Rule 30.13 is amended to clarify the meaning of the time priority for the first bid or offer at a particular price. As amended, the Rule provides that the first bid or offer is entitled to priority and has precedence on the next transaction at that price, but only up to the number of shares or other units in such bid or offer.

Existing CBOE Rule 6.74 generally addresses the circumstances in which a member Floor Broker may "cross" a customer order on the floor of the Exchange. Paragraph (b) of the Rule addresses in particular the circumstances in which a Floor Broker may execute a "facilitation order," defined in Rule 6.53(m) essentially to mean an order that has been transmitted to the floor of the Exchange by a member organization for execution, in whole or in part, in a cross transaction with a public customer of that member organization. Proposed CBOE Rule 30.17(a)(2) would have addressed the same subject in substantially similar terms. Because existing Rule 6.74 already would apply to stocks and other

[2] Rule 30.41 has been further amended in Amendment No. 2. *See, infra.*

[3] Rule 31.5 has been further amended in Amendment No. 2. *See, infra.*

securities traded subject to the rules in Chapter XXX, CBOE does not believe it is necessary to have an additional Rule on the same subject and Rule 30.17 is being amended accordingly.

Rule 30.18(b) is amended to permit an odd-lot dealer to initiate transactions for a joint account in which it is permitted to have an interest. Thus, an odd-lot dealer would be treated for this purpose in the same manner as a Market-Maker or a Designated Primary Market-Maker.

Rules 30.21 and 30.22, which set forth standards for odd-lot dealers and for odd-lot transactions, respectively, are new rules not previously contained in the rule filing. Rule 30.21 requires odd-lot dealers to be registered with the Exchange, and places certain limits on an odd-lot dealer's trading in securities for which the dealer is registerd. Rule 30.21(c) further requires an odd-lot dealer to obtain the prior approval of a Floor Official in certain circumstances where the odd-lot dealer is in procession of selling or buying odd-lot orders. Rule 30.22 sets forth procedures and requirements for the execution of odd-lot orders and limits the circumstances in which a differential may be charged.

Amendments to Rule 30.33 establish the minimum fractional charge for bonds (⅛ of 1% of the principal amount) and authorize the Board of Directors of the Exchange to establish different variations for bids and offers in specific issues or classes of any of the securities traded subject to the rules in Chapter XXX.

The Rule establishing margin requirements for Market-Makers in stock and other securities traded subject to the rules in Chapter XXX has been modified in certain minor respects. In particular, a cross-reference to a portion of the Commission's net capital rule has been deleted from paragraphs (a) and (b) of Rule 30.41. That Rule also has been amended to make clear that in the event that a member's account(s) would liquidate to a deficit, the carrying member organization may extend no further credit until the account(s) in question maintains a positive net liquidating equity. The Rule further provides that steps also should taken by the member organization to liquidate promptly any positions in the member's account(s) in the event that the member organization's calls for additional equity are not met.[4]

Rules 30.71, 30.72, 30.74, 30.76 and 30.77, all relating to the Intermarket Trading System ("ITS"), have been amended in various minor respects to clarify the meaning and intent of those Rules and to conform them as necessary to the rules of other ITS participant market centers.

Rule 30.124, relating to the signature guarantee required for the assignment of securities to be delivered other than pursuant to the rules of a Clearing Corporation, has been amended to provide that any such guarantee can be supplied by a member or member organization or any entity for which signatures are on file with and acceptable to the transfer agent for such security. Thus, a transfer agent could, but would not be required to, accept the signature guarantee of a bank, trust company, or other financial institution.

Rule 31.5 establishes guidelines for the eligibility of securities listed on CBOE. Among the criteria evaluated by the Exchange is the public distribution of the securities issued by the applicant for listing. Rule 31.94, relating to the delisting of securities, already provides that securities are not to be deemed for this purpose to be publicly held where they are owned by officers, directors, controlling shareholders, or other owners of family or concentrated holdings. Rule 31.5 is now being amended to incorporate this same standard into CBOE's original listing rule.[5]

Rule 31.6 establishes alternative listing criteria for "research and development" companies. CBOE is now amending that Rule to increase substantially the net worth requirements for such issuers and explicitly to allow the inclusion of certain intangible assets for this purpose. CBOE is further amending this Rule to establish an alternative income test for these companies.

Rule 31.7 sets forth standards for the listing of securities of foreign issuers. As proposed, that Rule would have required CBOE generally to take into account the financial reporting practices in the issuer's domicile. That Rule is being amended to refer specificity to the issuance of quarterly earnings statements in order to describe with greater specifically the type of financial reporting the Exchange would ordinarily expect of an applicant for listing on CBOE.

Proposed Rule 31.11, relating to the voting rights of the holders of a listed company's common stock, has been amended to set forth the substantive standards of Commission rule 19c-4.[6] As amended, Rule 31.11 also will provide that CBOE will not approve the listing of non-voting common stock, even where the issuance of such stock is not inconsistent with the standards of Rule 19c-4.

Rule 31.90 has been amended, consistent with the requirements of rule 17Ad-2 under the Act, to extend from 48 to 72 hours the time in which routine transfers of securities are to be effected. That Rule also has been amended to permit transfer agents to effect transfers through the facilities of the Midwest Securities Trust Company.

Rule 31.94, relating to the delisting of securities, has been amended to provide that, in the absence of extraordinary circumstances, securities will be suspended from dealings on the Exchange or delisted upon the occurance of any of the events set forth in that Rule.

The Exchange had previously proposed to amend its Educational Circular No. 23, relating to the "front-running" of blocks, to make clear that the prohibitions of that Circular apply to transactions in stocks when a member has learned about the actual or imminent execution on the Exchange of any block transaction involving 10,000 or more shares of stock. CBOE believes that this subject is best addressed as part of a comprehensive review of "front-running" policies and has, therefore, withdrawn its proposed amendments to Educational Circular No. 23.

The amendments to the proposed rule change are consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the amendments to the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See, supra* note 2 and accompanying text.

[5] *See supra* note 3 and accompanying text.

[6] The Commission notes that rule 19c-4 under the Act was vacated as of July 27, 1990, as a result of the recent decision in *Business Rounddtable* v. *S.E.C.*, No. 88-1615 (D.C. Cir., June 12, 1990). Rule 19c-4 amended the rules of national securities exchanges and associations to prohibit the listing or quoting of common stock or other equity securities of any domestic company that has issued a class of securities or taken other corporate action that has the effect of nullifying, restricting or disparately reducing the per share voting rights of existing shareholders.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing amendments. Persons making written submisions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the amendments to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC., 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–90–08 and should be submitted by August 28, 1990.

Dated: July 31, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–18438 Filed 8–6–90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in Over-the-Counter Issue

August 1, 1990.

On June 26, 1990, the Midwest Stock Exchange, Inc. (MSE) submitted an application for unlisted trading privileges (UTP) pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 (Act) in the following over-the-counter (OTC) security, *i.e.*, a security not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7–6066	TWRX	Software Toolworks, Inc. $.01 par value

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7–6067	NIKE	Nike, Inc. No par value

A replacement issue is being requested due to the listing of Nike, Inc. on the New York Stock Exchange.[1]

Comments

Interested persons are invited to submit on or before August 21, 1990, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

[1] Securities listed on a national securities exchange are not eligible for OTC/UTP.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–18440 Filed 8–6–90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22–20498]

Application and Opportunity for Hearing; American Airlines, Inc.

August 1, 1990.

Notice is hereby given that American Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that (*a*) The trusteeship of The Connecticut National Bank ("CNB") under each of up to nine indentures to be qualified under the Act and (*b*) the trusteeship of CNB under one or more of such qualified indentures and under certain other indentures described below, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under such qualified indentures or such other indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be exclused from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of provising on application to the Commission, and after opportunity for a hearing thereon, that tursteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. The Applicant has filed five Registration Statements on Form S–3 covering the proposed issuance of up to

nine series of 1990 Equipment Trust Certificates, to be designated as Series M through U (the "Proposed Certificates").

2. Each series of the Proposed Certificates will be issued pursuant to a separate indenture (a "Proposed Indenture"), each to be qualified under the Act, among a banking institution, as trustee for an institutional investor acting as the equity participant (an "owner trustee"), the Applicant as lessee, and an indenture trustee (the "Proposed Indenture Trustee"). The Applicant desires to appoint CNB as the Proposed Indenture Trustee under each such Proposed Indenture.

3. The proceeds from the sale of the Proposed Certificates will be used to provide long-term financing for a portion of the equipment cost of up to nine Boeing 757–223 Aircraft or McDonnell Douglas DC–9–82 Aircraft, each of which will be leased by the owner trustee to the Applicant.

4. Each series of the Proposed Certificates will be secured by a security interest in one of the aircraft and by the right of the owner trustee to receive rentals payable in respect of such aircraft by the Applicant under the applicable lease. No aircraft will be covered by more than one Proposed Indenture or by any other indenture, and the Proposed Certificates to be issued pursuant to any one Proposed Indenture will be separate from the Proposed Certificates to be issued pursuant to any other Proposed Indenture.

5. CNB currently acts as indenture trustee under five qualified indentures under which the Applicant's 1990 Equipment Trust Certificates, Series H through L are outstanding (the "May 1990 Qualified Indentures"). Each of the May 1990 Qualified Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one Boeing 757–223 Aircraft or one McDonnell Douglas DC–9–82 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant May 1990 Qualified Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

6. CNB currently acts as indenture trustee under three qualified indentures, under which the Applicant's 1990 Equipment Trust Certificates, Series E through G are outstanding (the "August 1989 Qualified Indentures"). Each of the August 1989 Qualified Indentures relates to a separate leveraged lease transaction in which an institutional investor acting as the equity participant leases one Boeing 757–223 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant August 1989 Qualified Indenture relates and by the right of the equity participant to receive rentals on such aircraft from the Applicant.

7. CNB currently acts as indenture trustee under four qualified indentures, under which the Applicant's 1990 Equipment Trust Certificates, Series A through D are outstanding (the "July 1989 Qualified Indentures"). Each of the July 1989 Qualified Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 or Boeing 757–223 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant July 1989 Qualified Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

8. CNB currently acts as indenture trustee (a "1988 Pass Through Trustee") under four qualified indentures under which the Equipment Note Pass Through Certificates, Series 1988–A are outstanding (the "1988 Qualified Indentures") and as indenture trustee under four separate leveraged lease indentures related to the 1988 Qualified Indentures (the "1988 Lease Indentures"). Each of the 1988 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1988, each owner trustee issued four series of loan certificates (the "1988 Equipment Notes") under each 1988 Lease Indenture to four separate grantor trusts. These grantor trusts in turn issued four series of Pass Through Certificates (the "1988 Pass Through Certificates") under the four separate 1988 Qualified Indentures. The 1988 Equipment Notes issued with respect to each 1988 Lease Indenture are secured by a security interest in the aircraft to which such 1988 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant. The Pass Through Certificates issued under the 1988 Qualified Indentures represent undivided interests in the 1988 Equipment Notes held by the related 1988 Pass Through Trustee.

9. CNB currently acts as Pass Through Trustee (a "1987 Pass Through Trustee") under four qualified indentures under which the Equipment Note Pass Through Certificates, Series 1987–A, are outstanding (the "1987 Qualified Indentures") and as indenture trustee under six separate leveraged lease indentures related to the 1987 Qualified Indentures (the "1987 Lease Indentures"). Each of the 1987 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnel Douglas DC–9–82 Aircraft to the Applicant. In 1987, each owner trustee issued seven series to loan certificates (the "1987 Equipment Notes") under each 1987 Lease Indenture to seven separate grantor trusts. These grantor trusts in turn issued seven series of Pass Through Certificates (the "1987 Pass Through Certificates") under the seven separate 1987 Qualified Indentures. (To date, three series of 1987 Equipment Notes have matured, and the 1987 Pass Through Certificates issued by the three grantor trusts holding such Equipment Notes similarly matured and were paid at maturity. As a result, the three 1987 Qualified Indentures under which such 1987 Pass Through Certificates were issued terminated. Thus only four 1987 Qualified Indentures remain.) The 1987 Equipment Notes issued with respect to each 1987 Lease Indenture are secured by a security interest in the aircraft to which such 1987 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant. The Pass Through Certificates issued under the 1987 Qualified Indentures represent undivided interests in the 1987 Equipment Notes held by the related 1987 Pass Through Trustee.

10. CNB currently acts as indenture trustee under an indenture, dated as of October 15, 1986 (the "Other Indenture"), between CNB and an owner trustee that relates to a leveraged lease transaction in which the owner trustee, for the benefit of certain institutional investors acting as equity participants, issued in a private placement loan certificates to institutional investors acting as loan participants. The proceeds of the issuance of the loan certificates issued under the Other Indenture were used by the owner trustee to purchase one Boeing 767–223 Aircraft that was then leased by such owner trustee to the Applicant. The Applicant is not a party to the Other Indenture (only the owner trustee as issuer of the loan certificates and CNB are parties), but the Applicant's unconditional obligation to make rental payments under the lease relating to such Other Indenture is the only credit source for principal and interest payments on the loan certificates. The loan certificates issued under the Other Indenture are secured by a security interest in the aforementioned Boeing 767–223 Aircraft and the right of the owner trustee to receive rentals on such aircraft from the Applicant.

11. CNB's acting as trustee under the Proposed Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture does not present any likelihood of a material conflict of interest within the meaning of section 310(b)(1) of the Indenture Act. Each series of the Proposed Certificates will be secured under the relevant Proposed Indenture by collateral specific to such Proposed Indenture, and each series of loan certificates outstanding under the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures and the Other Indenture will be secured under the relevant indenture by collateral specific to such indenture. None of the Proposed Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture provides for cross-collateralization. The collateral relating to each series of the Proposed Certificates is not subject to the claims of holders of any other Proposed Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture. None of the collateral relating to the May 1990 Qualified Indentures, August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture is subject to the claims of holders of the Proposed Certificates.

12. CNB's powers as trustee in respect of any default under any Proposed Indenture are not restricted by the provisions of any other Proposed Indenture, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture.

13. The Applicant is not in default in any respect under any of the May 1990 Qualified Indenture, the August 1989 Qualified Indentures, July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture and will not, at the time of execution thereof, be in default in any respect under any of the Proposed Indentures.

The Applicant waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Section, File Number 22–20498, 450 Fifth Street NW., Washington, DC.

Notice is further given that any interested person may, not later than August 27, 1990, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–18437; Filed 8–6–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–90–33]

Petition for Exemption; and Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 27, 1990.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Buiilding (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 1, 1990.

Denise Donohue Hall,

Manager, Program Management Staff Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 24440
Petitioner: American Flyers
Sections of the FAR Affected: 14 CFR 141.91(a)
Description of Relief Sought: To extend Exemption No. 4419, as amended, that allows petitioner to conduct flight training in its approved courses of training at satellite bases that are more than 25 miles from its main operations base. Exemption No. 4419, as amended, will expire on January 31, 1991.

Docket No.: 24800
Petitioner: Tennessee Air Cooperative, Inc.
Sections of the FAR Affected: 14 CFR 103.1(e)(1)
Description of Relief Sought: To extend Exemption No. 5001 that allows petitioner to operate powered ultralight

vehicles at an empty weight of more than 254 pounds. Exemption No. 5001 will expire on December 31, 1990.

Docket No.: 25636
Petitioner: International Aero Engines
Sections of the FAR Affected: 14 CFR 21.325 (b)(1) and (b)(3)
Description of Relief Sought: To extend Exemption No. 4991 that allows export airworthiness approvals to be issued for Class I products (engines) assembled and tested in the United Kingdom and Class II and III products manufactured in the International Aero Engines consortium countries of Italy, West Germany, Japan, and the United Kingdom. Exemption No. 4991 will expire on December 24, 1990.

Docket No.: 26114
Petitioner: Pemco Aeroplex, Inc.
Sections of the FAR Affected: 14 CFR 145.37(b)
Description of Relief Sought: To extend Exemption No. 5152 that allows petitioner's facility in Birmingham, Alabama, to exercise the privileges of its repair station certificate using facilities that do not comply with the permanent housing requirement of the FAR. Exemption No. 5152 also allows petitioner to accomplish the supplemental type certificate modification of two additional B–747–100 airplanes under preexistent contractual obligations. Exemption No. 5152 will expire on December 31, 1990.

Docket No.: 26169
Petitioner: Clackamas County Sheriff's Department
Sections of the FAR Affected: 14 CFR 61.118
Description of Relief Sought: To allow petitioner's Aero Squadron members to be reimbursed for fuel, oil, and maintenance while serving as pilot in command during Aero Squadron missions.

Docket No.: 26200
Petitioner: Security Aviation, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow pilots employed by petitioner to remove or replace passenger seats and/or medivac beds for aircraft used in Part 135 operations.

Docket No.: 26243
Petitioner: Ted Rutherford
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as pilot of an airplane operating under Part 121 after his 60th birthday.

Docket No.: 26284
Petitioner: Embraer
Sections of the FAR Affected: 14 CFR 135.159
Description of Relief Sought: To allow U.S. operators of its EMB–120 aircraft to operate under VFR at night or under VFR over-the-top conditions with a third attitude indicator instead of a gyroscopic rate-of-turn indicator.

Docket No.: 26288
Petitioner: Tracor Aviation, Inc.
Sections of the FAR Affected: 14 CFR 21.439(a)(3), 21.441(b), and 21.451(a)(1)
Description of Relief Sought: To allow prototype tests and inspections to be accomplished in a foreign country or on foreign-registered airplanes.

Dispositions of Petitions

Docket No.: 12227
Petitioner: National Business Aircraft Association, Inc.
Sections of the FAR Affected: 14 CFR 91.169(f) and 91.181(a)
Description of Relief Sought/Disposition: To extend Exemption No. 1637, as amended, that allows petitioner's members to operate small civil airplanes and helicopters of U.S. registry under the operating rules of §§ 91.183 through 91.215 and the inspection procedures of § 91.169(f)
Grant, July 23, 1990, Exemption No. 1637P

Docket No.: 25978
Petitioner: Colorado Springs Airport
Sections of the FAR Affected: 14 CFR 107.14
Description of Relief Sought/Disposition: To exempt petitioner from requirement to install a security controlled access system that meets the requirements of § 107.14.
Denial, July 26, 1990, Exemption No. 5218

Docket No.: 26133
Petitioner: National Soaring Foundation, Inc.
Sections of the FAR Affected: 14 CFR 61.3 and 91.27
Description of Relief Sought/Disposition: To allow foreign-built gliders to participate in the 21st National Standard Class Soaring Championships in Hobbs, New Mexico, on July 24–August 2, 1990.
Partial Grant, July 20, 1990, Exemption No. 5217

Docket No.: 26220
Petitioner: Mesaba Aviation, Inc.
Sections of the FAR Affected: 14 CFR 121.333 and 121.337(d)(2)
Description of Relief Sought/Disposition: To allow petitioner to operate its Fokker F–27 aircraft for 120 days past July 31, 1990, compliance date without those aircraft being equipped with protective breathing equipment for the third flight crewmember and oxygen for emergency descent purposes.
Exemption not required; Amendment No. 121–218 granted the relief requested by petitioner

[FR Doc. 90–16391 Filed 8–6–90; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 1, 1990.

The Department of Traeasury 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0096.
Form Number: ATF F 5130.12 (1689).
Type of Review: Extension.
Title: Beer for Exportation.
Description: Untaxpaid beer may be removed from a brewery for exportation without payment for the excise taxes normally due. In order for this to be accomplished, and for ATF to monitor such transactions, brewers complete ATF F 5130.12 (1689). This form moinitors exports on ships and aircraft or to military bases. The form is certified by U.S. Customs and ensures that untaxpaid beer does not reach domestic markets.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 101.
Estimated Burden Hours Per Response: 1 hour, 39 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.
Clearance Officer; Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Louis K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-18408 Filed 8-6-90; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 1, 1990.

The Department of Treasury has made revisions and resubmitted the following public information collection requirment(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 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0997.

Form Number: IRS Form 1099-S.

Type of Review: Resubmission.

Title: Statement for Recipients of Proceeds From Real Estate Transactions.

Description: Form 1099-S is used by the person treated as the real estate reporting person to report proceeds from a real estate transaction to IRS.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 101,300.

Estimated Burden Hours Per Response: 8 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 480,050 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. 90-18409 Filed 8-6-90; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

[T.D. 90-64]

Cancellation With Prejudice of Individual Customs Broker's License No. 5201 Issued to Vincent J. Mallon

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

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs on July 18, 1990, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual Custom's broker's license No. 5201 issued to Vincent J. Mallon.

Dated: July 30, 1990.

William Luebkert,

Acting Director, Office of Trade Operations.

[FR Doc. 90-18458 Filed 8-6-90; 8:45 am]

BILLING CODE 4820-02-M

Office of Thrift Supervision

[No. 90-1432]

Public Disclosure of Reports of Condition

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: The Office of Thrift Supervison ("OTS") hereby gives notice that all of the information collected by it in the Thrift Financial Report from the savings associations it supervises will be made available to the public upon request except that which is proprietary to the supervisory process, experimental or so highly variable as to be potentially misleading. This action is being taken pursuant to section 5(v) of the Home Owners' Loan Act, as added by the Financial Institution Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183.

DATES: August 7, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas A. Loeffler, Director, Surveillance and Analysis (202) 331-4518, or Richard C. Pickering, Senior Advisor, Supervisory Policy (202) 906-6770, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), which established the Office of Thrift Supervision ("OTS"), assigned it the responsiblity for regulating savings associations. Section 5(v) of the Home Owner's Loan Act, as added by FIRREA, provides that (i) each savings association shall make reports of condition to the Director, OTS, in a form prescribed by the Director; (ii) these reports and all the information contained therein shall be available to the public unless the Director determines that public disclosure of a particular item would not protect the safety or soundness of a particular institution or institutions or the Savings Association Insurance Fund, or otherwise would not be in the public interest; and (iii) if the Director restricts disclosure of any item, he shall disclose this fact and the reason therefor in the Federal Register.

Pursuant to the above described requirement, and after a thorough review of the information collected by OTS on the Thrift Financial Report ("TFR"), the Director has determined not to permit the public disclosure at this time of the following information for the indicated reasons (parenthetic references are to schedules and line items of the 1990 TFR):

1. Data proprietary to the regulatory process. Public release of this information explicitly for regulatory use would increase the incentive for, and probability of, inaccurate reporting and thereby make it less useful for promoting safety and soundness.

a. Classified assets (Schedule AS, Lines 20-280, Schedule TA, Lines 400-430 and Lines 100-110).

b. Specific valuation allowances (Schedule VA, Lines 210-280).

c. Fair value of assets repossessed (Schedule TA, Lines 320-340).

d. Loans 30-89 days past due but still accruing (Schedule PD, Lines 10-150).

2. Maturity/repricing/rate information used to measure interest rate risk (Schedule MR, except for row totals, combining performing and non-performing loan totals for loan categories). The information reported in this schedule is in the process of being expanded and enhanced. Until this process is complete and appropriate analytical presentations developed, the information can be so misleading that its public release would not be in the public interest. The planned enhancements are expected to be completed by early 1991 and the information reported on this schedule will be made available beginning with the enhanced Schedule MR.

3. Data reported monthly (except balances for end-of-quarter months) similar to that reported quarterly and publicly released. In part because the time span covered by monthly data is shorter than the quarter period conventionally used for financial

reporting, these data are more variable than the quarterly information and consequently can be misleading. Moreover, the OTS is reviewing the need for collecting such information for surveillance purposes from all supervised savings associations. If such review results in a decision to continue monthly reporting by all supervised associations, the Director will reconsider the disclosure issue.

Dated: July 31, 1990.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 90–18328 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/2]

Citizens & Builders Federal Savings, F.S.B., 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 Citizens & Builders Federal Savings, F.S.B., Pensacola, Florida on July 27, 1990.

Dated: July 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18329 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[N–4/2]

Guaranty Savings Bank, F.S. B.; 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 in the Resolution Trust Corporation as sole Conservator for Guaranty Savings Bank, F.S.B., Fayetteville, North Carolina, on July 27, 1990.

Dated: July 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 18330 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/2]

Professional Federal Savings Bank; 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 Professional Federal Savings Bank, Coral Gables, Florida, on July 27, 1990.

Dated: July 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18331 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/2]

Statesman Federal Savings Bank; 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 Financal Institutions of Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has fully appointed the Resolution Trust Corporation as sole Conservator for Statesman Federal Savings Bank, Des Moines, Iowa, on July 27, 1990.

Dated: July 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18332 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/2]

United Federal Savings Bank; 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 Financal Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for United Federal Savings Bank, Vienna, Virginia on July 31, 1990.

Dated: August 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18333 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/1]

Citizens & Builders Federal Savings Bank; Appointment of Receiver

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 Citizens & Builders Federal Savings Bank, Pensacola, Florida ("Association"), on July 27, 1990.

Dated July 31, 1990.

Nadine Y. Washington,

Executive Secretary.

By the Office of Thrift Supervision.

[FR Doc. 90–18334 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/1]

Guaranty Federal Savings Bank; Appointment of Receiver

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 Guaranty Federal Savings Bank, Fayetteville, North Carolina, Docket No. 0284, on July 27, 1990.

Dated July 31, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18335 Filed 8–6–90; 8:45 am]

BILLING CODE 6720–01–M

[LN–4/1]

Professional Savings Bank; 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 Professional Savings Bank, Coral Cables, Florida ("Association"), on July 27, 1990.

Dated: July 31, 1990.

By the Office of Thrift Supervision

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18336 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

[LN-4/1]

Statesman Bank for Savings, FSB; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) 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 Statesman Bank for Savings, FSB, Des Moines, Iowa, Docket No. 8482, on July 27, 1990.

Dated: July 31, 1990.

By the Office of Thrift Supervision

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18337 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

United Savings Bank; Appointment of Receiver

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 United Savings Bank, Vienna, Virginia, on July 31, 1990.

Dated: August 1, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18338 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-46]

Clayton Savings and Loan Association Clayton, MO; Notice of Final Action, Approval of Conversion Application

Date: July 31, 1990.

Notice is hereby given that on July 31, 1990, the Director of the Office approved the application of Clayton Savings and Loan Association, Clayton, Missouri, for permission to convert to a state stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of the conversion stock by First Banks, Inc.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18339 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-45; OTS No. 1909]

Elmira Savings and Loan, F.A., Elmira, NY; Final Action, Approval of Conversion Application

Date: July 27, 1990.

Notice is hereby given that on July 13, 1990, the designee of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Elmira Savings and Loan, F.A., Elmira, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, 10 exchange Place Centre, 17th floor, Jersey City, New Jersey 07302.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18340 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-44; OTS Nos. 1739 and 4091]

First Federal Savings and Loan Association of Kendallville, Kendallville, IN; Merge With and Into Peoples Federal Savings Bank of DeKalb County, Auburn, IN; Notice of Final Action Approval of Conversion Application

Date: July 27, 1990.

Notice is hereby given that on July 13, 1990, the designee of the Chief Counsel, acting pursuant to the authority delegated to him, approved the application of First Federal Savings and Loan Association of Kendallville, Kendallville, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552 and District Director, Office of Thrift Supervision, Indianapolis District Office, 8250 Woodfield Crossing Blvd., suite 305, Indianapolis, Indiana 46240.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18341 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-43; OTS No. 3745]

Home Federal Savings and Loan Association, Rome, GA; Notice of Final Action Approval of Voluntary Supervisory Conversion Application

Date: July 26, 1990.

Notice is hereby given that the Director noted that on July 1990, the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him or his designee, approved the application of Home Federal Savings and Loan Association, Rome, Georgia, for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of all the conversion stock by State Mutual Insurance Company and Statco, Inc., Rome, Georgia.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-18342 Filed 8-6-90; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Initiative Grant Concept Paper; From Farm to Market; A Case Study in Agricultural Economics

Summary

The Office of Citizen Exchanges, Initiative Grants and Bilateral Accords Division, will consider applications from non-profit institutions for a grant to conduct a fourteen-day study tour on agricultural economics and food processing in the United States. The delegation will consist of eight Soviet officials who are responsible for food packaging, storage, and shipment on the national and republic levels. Preferably, the program will take place in late fall of 1990.

Background

The Soviet Government is grappling with economic reform in an effort to stimulate its economy. To this end, it has been enacting laws designated to decentralize the overall economic system. The government is keenly aware that the need for "restructuring" applies to the USSR's agricultural sector as well. This task is an urgent one, since food shortages have gotten worse in the past two years.

Small, individual (though not yet privately owned) household plots and large government-owned state and collective farms are currently the two principal sources of vegetables, fruit, meat, and dairy products in the USSR. Although individual plots constitute only about 3% of the overall farm acreage, they produce over half the crop of some fruits and vegetables, such as tomatoes. Privately grown foods are sold at markets or in cooperative stores at very high prices because they are not subsidized by the Soviet Government, as is the state and collective farm production. This, naturally, causes a lot of discontent among the consumers because the cheaper food supply in state stores is highly irregular.

The problem with the supply of fruits and vegetables is especially acute. Although students and teachers from schools and universities, soldiers, and employees of various enterprises in the cities are sent annually to the state and collective farms to help pick the crops, at least 50% of the produce never reaches market. It rots either in the fields or in transit. Transportation, refrigeration, and proper processing and packaging are not consistently available. Meat and dairy product shipments face a similar problem causing more shortages and discontent.

The Soviet Government has expressed a keen interest in learning more about the decentralized nature of the American economy, especially as it applies to agricultural production and the techniques we employ to get food from our farms to our markets.

This program will use hands-on study tour and case study formats to illustrate the economic and political aspects of agricultural supply and delivery, as well as demonstrate how we in the U.S. handle practical issues of food delivery.

Objectives

The objectives of this program are:

—To introduce our democratic, decentralized system using agribusiness issues as an example. The delegation will have an opportunity to learn about the economics of food supply at the national, state, and local levels. The group will also see how agricultural issues are resolved through our political process.

—To provide examples, using a case study format, of how produce and other perishable foods get from the farm to the marketplace. Put in another way: The objective is not the primary process of raising the food, but the secondary process of handling it. Therefore, special emphasis should be given to packaging, refrigeration, food processing, store orders, transportation techniques, and the role of technology.

—To establish communications between American businessmen and farmers on one hand, and their Soviet counterparts in the agribusiness sector on the other. Hopefully, these contacts will lead to subsequent private sector exchanges, agreements, and research designed to address Soviet agricultural supply problems and prepare the groundwork for possible future joint ventures.

Participants

The USIS post in Moscow will select the eight Soviet participants for this program, although the grantee can also offer suggestions. Participants should include some government officials from national and republic levels in the Ministries of Agriculture or Transportation, but preferably half of the participants should be from private cooperatives (whether in production or marketing) and from the newly-created Peasant's Union.

Fluency in English is not required. USIA will arrange for Russian-language interpreters through the Office of Language Services at the State Department.

Programming Suggestions

The following suggestions are offered to stimulate the grantee institution's own creative design and to alert grant applicants to some of USIA's interests and concerns. The program design must be balanced and non-partisan and representative of American political, geographic, and economic diversity.

The program might start in Washington, DC where the Soviet delegates would meet with U.S. Department of Agriculture personnel, Congressional leaders, and lobbyists who deal with issues affecting American agribusiness. They should get a background briefing or an overview of the issues facing the agribusiness sector in the U.S. and the overall objectives of the Exchange program, a brief survey of U.S. federal laws affecting agricultural production, farming methods, U.S. Government farm subsidies, and a discussion of marketing and transportation techniques.

For the case studies portion of the program, the delegates should visit a supermarket, a small neighborhood market and perhaps a specialty grocery store in the nation's capital to see how food is ordered and merchandized.

Are Washington, the delegation should travel to a state capital in order to look at these issues from the regional level. From there, using the case study approach, participants might visit several farms (perhaps, a vegetable farm, a poultry farm, a cattle ranch or a fishery), and packaging plants to obtain first-hand information on food handling and the path food travels after it leaves the farm.

At any point throughout the visit, the delegates could have meetings with employees of agribusiness and transportation companies. We also strongly encourage one-day visits to a land-grant university and an agricultural extension service. The program should focus on establishing a dialogue between the Soviet visitors and Americans who have the requisite expertise.

Program responsibilities include selecting places and people to see, topics for study, preparing any necessary program materials, making all logistical arrangements, and overseeing the programs on a daily basis.

Funding

Competition for USIA funding support is keen. The selection of a grantee is based not only on cost-effectiveness, institutional in-kind contributions, and minimal overhead, but also on the substantive nature of the program proposal and the professional capability of the organization to carry it out successfully.

USIA can devote between $50,000 and $60,000 to this project. Cost-sharing of at least 25% is strongly encouraged. The duration of the program will be approximately fourteen days. USIA will consider funding most costs for eight delegates, as suggested along the following lines: international and domestic travel, per diem (using NTE Federal Government Travel Regulations rates), domestic travel and per diem for staff from the grantee institution, and two escort interpreters. (Please note that staff is not eligible for per diem in the city where the grantee institution is located.)

Other expenses include two allowance payments for attendance at a cultural event (maybe a square dance or a rodeo), a one-time book allowance,

and funds for administrative costs. These may include salaries, modest honoraria, telex, telephone, and reproduction. The categories described above are examples and the grant applicant may wish to cover any of them through in-kind contributions or other resources.

Detailed, three-column budgets are required summarizing funding amounts requested from USIA, institutional or other contributions, and total costs. The attached sample shows the types of charges that grantee institutions can make to USIA and other sources. The figures included represent maximum allowable amounts. If requested support for salaries, please include monthly or daily pay rate.

The application deadline for submissions of a formal proposal including all requisite forms is August 27, 1990.

Please direct all questions relating to this project to: Dr. Ludmila A. Foster, Program Development Officer, Office of Citizen Exchanges (E/P), USIA Room 220, Washington, DC 20547, Telephone: (202) 619–5326.

Dated: July 30, 1990.

Stephen J. Schwartz,

Director, Office of Citizen Exchanges.

[FR Doc. 90–18379 Filed 8–6–90; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 152
Tuesday, August 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:38 p.m. on Wednesday, August 1, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the probable failure of an insured bank.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (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)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (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: August 2, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-18488 Filed 8-2-90; 5:09 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, August 9, 1990 at 10:00 a.m.

PLACE: 999 E Street NW, Washington, DC, Ninth Floor.

STATUS: This meeting will be open to the public.

ITEM TO BE DISCUSSED: Convention Regulations—Draft Notice of Proposed Rulemaking.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-18574 Filed 8-6-90; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 2, 1990.

TIME AND DATE: 10:00 a.m., Thursday, August 9, 1990.

PLACE: Room 600, 1730 K Street NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In open session the Commission will consider and act upon the following:

1. *Harry Ramsey v. Industrial Constructors Corporation,* WEST 88-246-DM. (Issues include whether Ramsey was constructively discharged in violation of 30 U.S.C § 815(c).)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow (202) 653-5629/(202) 708-9300 for TDD Relay Sandra G. Farrow 1-800-877-8339 (Toll Free).

[FR Doc. 90-18569 Filed 8-3-90; 2:57 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 13, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed purchase of computers within the Federal Reserve System.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: August 3, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-18590 Filed 8-3-90; 3:27 pm]

BILLING CODE 6210-01-M

INTERNATIONAL TRADE COMMISSION

Meeting

[USITC SE-90-17]

TIME AND DATE: Monday, August 13, 1990 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-464 (P) (Sparklers from the People's Republic of China)—briefing and vote.
6. Inv. No. 731-TA-451 (F) (Gray Portland Cement and Cement Clinker from Mexico)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: August 1, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-18508 Filed 8-3-90; 12:25 pm]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, August 14, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th & Constitution Avenue, NW., Washington, DC 20423.

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: As set forth below.

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275–7252, TDD: (202) 275–1721

Sidney L. Strickland, Jr.,

Secretary.

August 14, 1990.

Docket No. AB–33 (Sub-No. 64), Union Pacific Railroad Company—Abandonment—in Yolo County, CA

Docket No. AB–301 (Sub-No. 6), SouthRail Corporation—Abandonment—in Wayne and Green Counties, MS and Washington and Mobile Counties, AL

Finance Docket No. 31623, Rutherford Railroad Development Corporation—Exemption—49 U.S.C. Subtitle IV

Docket No. AB–6 (Sub-No. 318X), Burlington Northern Railroad Company—Abandonment Exemption—in McKenzie County, ND

Docket No. AB–167 (Sub-No 1003N), Conrail Abandonment in Butler and Armstrong Counties, PA

Docket No. AB–167 (Sub-No. 1088X), Consolidated Rail Corporation—Exemption—Abandonment of the Weirton Secondary Track in Harrison and Tuscarawas Counties, OH

Docket No. AB–55 (Sub-No. 319X), CSX Transportation, Inc.—Abandonment Exemption—in Nicholas County, WV

Investigation and Suspension Docket No. 9205, et al., Trainload Rates on Radioactive Materials, Eastern Railroads

Finance Docket No. 31591, Wheeling Acquisition Corporation—Acquisition and Operation Exemption—Lines of Norfolk & Western Railroad Company

Ex Parte No. MC–37 (Sub-No. 40), Commercial Zones and Terminal Areas

Finance Docket No. 30965 (Sub-No. 1), Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company

[FR Doc. 90–18545 Filed 8–3–90; 12:52 pm]

BILLING CODE 7035–01–M

NATIONAL SCIENCE BOARD

Schedule of Meetings

DATES AND TIME:

August 16, 1990—8:30 a.m. Closed Session
August 17, 1990—8:00 a.m. Closed Session
August 17, 1990—10:00 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED AUGUST 16:

Thursday, August 16, 1990

Closed Session (8:30 a.m. to 12:00 Noon and 1:30 to 5:30 p.m.)

1. Grants and Contracts

Friday, August 17, 1990

Closed Session (8:00 a.m. to 10:00 a.m.)

2. Minutes—May and June 1990 Meetings
3. NSB and NSF Nominees
4. Future NSF Budgets

Open Session (10:00 a.m. to 11:30 a.m.)

5. Grants, Contracts, and Programs
6. Establishment of OIG Budget Process
7. Chairman's Report
8. Minutes May and June 1990 Meetings
9. Director's Report
10. Other Business

Thomas Ubois,

Executive Officer.

[FR Doc. 90–18568 Filed 8–3–90; 2:17 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 6, 13, 20, and 27, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 6

Thursday, August 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 13—Tentative

Thursday, August 16

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)
9:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 20—Tentative

There are no meetings scheduled for the Week of August 20.

Week of August 27—Tentative

Thursday, August 30

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 90–18584 Filed 8–3–90; 8:45 am]

BILLING CODE 7590–01–M

PAROLE COMMISSION

Record of Vote of meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, July 24, 1990 at the Commission's Western Regional Office, 1301 Shoreway Road, Fourth Floor, Belmont, California 94002. The meeting ended at or about 12:00 p.m. The purpose of the meeting was to decide approximately 14 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Seven Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Cmmissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commisioners voted that the meeting be closed: Benjamin F. Bauer, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel Lopez, and Victor M.R. Reyes.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 30, 1990.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 90–18593 Filed 8–3–90; 3:27 pm]

BILLING CODE 4410–01–M

federal register

Tuesday
August 7, 1990

Part II

Department of Education

Office of Postsecondary Education
Upward Bound Program; Final Priority

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Upward Bound Program, Final Priority

AGENCY: Department of Education.

ACTION: Final Priority.

SUMMARY: The Secretary of Education establishes a priority for a fiscal year 1990 grant competition under the Upward Bound program for awards of one year's duration. Under this priority, $3 million is available to fund proposals from applicants to establish up to 30 regional centers, each of which will offer an intensified math and science curriculum for a six-week period during the summer to students currently participating in an Upward Bound project and who have completed the 9th grade. These projects are similar to centers funded by the National Science Foundation and therefore will be evaluated with these centers to identify successful practices.

EFFECTIVE DATES: This final priority takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett, Director, Division of Student Services, Office of Postsecondary Education, U.S. Department of Education (Room 3060, ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202–5249, Telephone (202) 708–4804.

SUPPLEMENTARY INFORMATION: The Upward Bound Program is authorized under title IV, sections 417A and 417C of the Higher Education Act of 1965, as amended. The purpose of the program is to generate in participants skills and motivation necessary for success in education beyond high school. Upward Bound provides academic instruction and other support services to students in grades 9–12 to encourage low-income and potential first-generation college students to complete high school and enter postsecondary education. The program structure is amenable to an inclusion of two major areas of precollegiate concentration that will motivate participant interest in and preparation for careers in math and science. Applicants for funds may be institutions of higher education, public and private agencies and organizations, and, in exceptional cases, secondary schools. The priority established by this notice is designed to enhance the opportunity for achievement in math and science among disadvantaged youth, and to give them additional opportunity to prepare for careers in math and science. On May 15, 1990, the Secretary published a Notice of proposed priority in the **Federal Register** (55 FR 20254).

Final Priority

Applicants may compete for one year awards to develop regional centers to provide an intensified math and science curriculum for six weeks during the summer of 1991, without regard to 34 CFR 645.10(b), to current Upward Bound students who have completed the 9th grade. The Secretary has decided to establish a priority for these awards for applicants who submit proposals demonstrating the capability to network with feeder projects (currently funded projects from which they recruit students) and to provide mechanisms for follow-up and academic support to participants when they return to their "home" projects; who have experience in providing specialized instructional and tutorial services to low-income students; who have demonstrated experience in administering bridge programs (summer residential programs for students that bridge the summer between graduation from secondary school and enrollment in a postsecondary institution); who propose to use faculty from their own and other institutions who are actively engaged in a program of research-related activities; who propose to involve each student served under this priority in those activities; and, who include in their application a commitment from an institution to make its faculty, laboratories, state-of-the-art equipment and dormitories available to these students. Each applicant must propose a full-time coordinator for this initiative who has at least a bachelor's degree in math or science.

In making awards under this priority, the Secretary will, to the extent possible, make grants in each geographic region of the United States to ensure that the maximum number of students currently enrolled in an Upward Bound project have access to these special initiative projects.

Projects must establish a cooperative relationship with other Federal and non-Federal science and mathematics teaching and learning activities, if any, in their areas, including 1) activities funded under the Eisenhower Mathematics and Science Education programs and by the National Science Foundation, 2) the mathematics and science teachers and curriculum planners in their areas, and 3) if there are Federal laboratories or science facilities in the area, with those facilities participating in the Secretary of Energy's initiative to relate those facilities to elementary and secondary school science teaching. All grantees are required to cooperate fully with the ED/NSF evaluation.

Analysis of Comments and Changes

In response to the Secretary's invitation in the Notice of proposed priority, thirty-two (32) parties submitted comments on the proposed priority. An analysis of the comments follows:

Eligible Participants

Comments: Four commenters recommended that institutions of higher education operating programs similar to Upward Bound be allowed to use funds to continue and/or expand such programs rather than recruit students from among current Upward Bound students.

Discussion: The Secretary recognizes that institutions of higher education, States, and other funding sources are also supporting programs similar to the proposed Upward Bound math and science initiative. However, the purpose of this priority is to fund proposals from applicants to establish regional centers to serve students currently participating in an Upward Bound project, thereby increasing the number of disadvantaged students benefiting from exposure to math and science. Institutions of higher education that operate programs similar to Upward Bound may apply under the competition so long as they propose to serve current Upward Bound students exclusively.

Changes: None.

Comments: Twelve commenters recommended that students other than those currently participating in an Upward Bound project be eligible to participate in the math and science initiative. Four of the twelve commenters stated that, given the need for math and science majors, all students should be able to participate in the centers. Five of the twelve commenters recommended that other students who meet the Upward Bound eligibility criteria, some of whom are on currently-funded projects' waiting lists, should be allowed to participate. One of the twelve commenters suggested that given the need "to instill a need for math and science when [students] enter high school," the regional centers should admit eighth graders. One commenter recommended expanding the age range to include grades 4–12, noting that "young children of color and other

minority groups need constructive programs." Two of the commenters expressed concern that by emphasizing undereducated "youth", the proposed initiative overlooks and thereby "automatically eliminates" participants enrolled in Veterans Upward Bound projects. One commenter recommended that participation be limited to current Upward Bound students who have taken at least two courses in each of the two areas and received an average passing grade.

Discussion: Current grantees under the Upward Bound Program operate both an academic year and a summer component. One of the criteria used to rate applicants will be the degree to which their proposals demonstrate their capability to network with feeder projects and their ability to provide mechanisms for follow-up and academic support of participants when they return to their "home" projects. Limiting participant eligibility to current Upward Bound students will ensure that the students will continue to receive supportive services during the academic year. The structure of Upward Bound projects will facilitate follow-up by the centers and serve to minimize contacts which would be required if students other than those currently participating in an Upward Bound project were eligible to participate. The inclusion of students not currently participating in Upward Bound would create an additional burden on the projects to assess the current academic status of the students prior to consideration for participation in the centers.

The Secretary also believes that the up to 30 projects to be funded in FY 1990 will provide a sound base of knowledge on which to increase the number of projects funded and students served in subsequent years. The Upward Bound program regulations (34 CFR 645.3(a)(4)) define eligible project participants as individuals who have completed the eighth grade but have not entered the twelfth grade and who meet the other eligibility criteria. The regulations do permit a project to serve students who are less than 13 years of age and who have not completed the eighth grade, but only if the project documents that its target area has an unusually high secondary school attrition rate. Upward Bound projects refrain from recruiting students who are in or who have completed the twelfth grade because there is such limited time to work with these students before they enter college. For these special math/science centers, the target population consists of students already in an Upward Bound program, the vast majority of whom are in grades 10 through 12. These centers are required to select students who have completed at least the ninth grade. This requirement is reasonable since there will be far more eligible students than the grantees will be able to serve. Equally important, this requirement will also assure that any student who has not completed the ninth grade and who is in a regular Upward Bound program has an opportunity to (1) adjust to and be evaluated by the program into which he was recruited before he is sent to a new project with a special focus, and (2) complete at least one of the usual mathematics and science courses required by secondary schools prior to entering a center with such a highly specialized curriculum. Finally, the Secretary will consider expanding the range of grades from which students are chosen in the future after there is data available on the effectiveness of the program.

According to the Upward Bound program regulations (34 CFR 645.3(b)), a veteran, regardless of age, is eligible to participate in an Upward Bound project if he or she satisfies the eligibility requirements in § 645.3(a)(4). Therefore, the priority does not exclude veterans currently participating in Upward Bound projects from participating in the regional centers.

Consideration will be given to expanding the scope of the projects to include students not currently participating in an Upward Bound project in any future initiative.

Participation by current Upward Bound students will not be limited to those students who have had at least two courses in each of the two areas. Such a restriction would adversely affect many Upward Bound students whose high school academic track does not require them to take two math and two science courses before the tenth and eleventh grade. Sending projects will be instructed to select students who have completed the 9th grade and who are interested in math and science, and who have taken at least one course in math and science at the ninth grade level.

Changes: None.

Summer Component

Comment: One commenter stated that regional and/or residential programs are not practical for Veterans Upward Bound participants because they are unable to relocate for even short amounts of time due to their families, and questioned whether the requirement of a residential component is in line with the program's thrust to "enrich the educational experience of the entire range of American students, not just Upward Bound youth."

Discussion: The Secretary recognizes that current Veterans Upward Bound participants may not be able to participate in a six-week residential program. However, the intent of the priority is to establish regional centers to serve current Upward Bound students throughout the region. The use of regional centers will require many students to study at a distance from their homes, making the provision of residential facilities a necessity for a significant number of the participants. Thus this requirement is identical for students in Upward Bound and in Veterans Upward Bound projects. Funds are not available to support the costs associated with this type of intensive program at all currently funded Upward Bound projects.

Changes: None.

Staff Qualification

Comment: One commenter recommended that the centers hire individuals who have qualifications in program administration to serve as coordinators.

Discussion: Potential applicants will be encouraged to recruit individuals to serve as coordinators who possess at least a bachelor's degree in math or science and who have experience in program administration.

Changes: None.

(Catalog of Federal Domestic Assistance Number: 84.047–Upward Bound Program)

Dated: July 16, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–18345 Filed 8–6–90; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Tuesday
August 7, 1990

Part III

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AB38

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions regulations to implement certain provisions of the "Student Loan Reconciliation Amendments of 1989," and to make certain provisions of those regulations consistent with recent case law interpreting the HEA.

EFFECTIVE DATE: These regulations take effect either September 21, 1990 or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Frohlicher, Division of Eligibility and Certification, U.S. Department of Education, 400 Maryland Avenue SW., room 3522, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20202–5323, telephone (202) 708–5794.

SUPPLEMENTARY INFORMATION:

1. The HEA was amended by the Student Loan Reconciliation Amendments of 1989, which were included as title II, Subtitle A of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239. As part of those Amendments, the Secretary was given specific authority in section 487(c)(1)(E) of the HEA to take emergency actions against institutions of higher education and vocational schools participating in the student financial assistance programs authorized under title IV of the HEA (Title IV, HEA programs). These programs are those listed at 34 CFR 668.1(c).

The Secretary revises 34 CFR 668.83 to conform that section to the new statutory provisions contained in section 487(c)(1)(E). As enacted, section 487(c)(1)(E) of the HEA is a virtual restatement of the provisions of the current § 668.83. Thus, section 487(c)(1)(E) of the HEA and § 668.83 of the regulations provide that in an emergency action, the Secretary may withhold title IV, HEA program funds from an institution or its students and withdraw the authority of the institution to disburse funds under any title IV, HEA program, or to obligate funds under these programs. Therefore, as under current regulations, while the emergency action is in effect, the institution is barred from initiating commitments of title IV, HEA aid to students by accepting a Student Aid Report, certifying an application for a loan under the Guaranteed Student Loan Programs, or issuing a commitment for aid under the Campus-based programs. The institution is barred from using its own funds or Federal funds on hand to make title IV grants, loans, or work assistance payments to students, or crediting student accounts with respect to such assistance. It may not release to a student the proceeds of a Guaranteed Student Loan Program loan, and must return the loan proceeds to the lender. Unless other arrangements are agreed to between the institution and the designated Department official, if a termination proceeding is begun while the emergency action is effective, the institution may not disburse or obligate any additional title IV funds needed to satisfy commitments in accordance with § 668.25 of the regulations until the completion of termination proceedings.

The statute authorizes the Secretary to take emergency action when immediate action is necessary to prevent misuse of student financial assistance funds because of institutional actions in violations of title IV, HEA requirements. This misuse in some cases may consist of an institution using the availability of those funds to promote the enrollment of students to whom the institution has misrepresented its educational programs, facilities, or charges, or the employment prospects of its graduates. In such cases, the Secretary takes emergency action in order to prevent the institution from defrauding members of the public by inducing them to enroll at the institution in reliance on Federally-financed loans and grants.

2. In the case of *Continental Training Services, Inc. d/b/a Superior Training Services* v. *Lauro Cavazos, Secretary of Education, et al.*, Nos. 89–1694 and 89–1799 (7th Cir. 1990), the United States Court of Appeals for the Seventh Circuit interpreted section 487(c)(1)(D) of the HEA to require the Secretary to provide a proprietary institution of higher education, if the institution so requests, a hearing on the record before the Secretary can revoke the institution's eligibility to participate in the title IV, HEA programs, even if that revocation was based upon the institution's failure to qualify as an eligible institution under the applicable statutory definition in title IV of the HEA.

In order to provide institutions with additional procedural protections, the Secretary is adopting the court's interpretation of that section and is applying that interpretation to all eligible institutions, and is revising the Institutional Eligibility regulations accordingly. Thus, the Secretary is adding § 600.41 to the Institutional Eligibility regulations. Under that section, the procedural requirements governing terminations contained in subpart G of the Student Assistance General Provisions regulations, including a hearing on the record, are made applicable to determinations that an institution has ceased to satisfy the applicable definitional elements of an eligible institution for purposes of the title IV, HEA programs. These elements are those set forth in 34 CFR 600.4, 600.5, 600.6, and 600.7. This opportunity for a hearing is available without regard to whether the institution has in effect a current institutional participation agreement under 34 CFR 668.12.

As the regulations have always reflected, a termination action under section 487(c) of the HEA has been directed at factors related to the institution's compliance with affirmative duties under the Act and regulations, and with the financial and administrative capability on which its certification to participate in the title IV, HEA student aid programs was based. The regulations as revised, while providing procedures for appeals of terminations of eligibility, will continue to recognize the distinction between determinations that institutions meet the definition of an eligible institution, and matters relating to the assessment of administrative and financial capability, typically referred to as the certification process.

The Secretary is aware that, in most instances, when an institution ceases to satisfy the applicable definition of an eligible institution, the reason is the loss of its accreditation or State authorization. In those circumstances, a hearing, if requested by the institution, will be extremely limited in scope because the only question to be determined is whether the institution has in fact lost its accreditation or its State authorization. If the administrative law judge finds that the institution has lost its accreditation or its State authorization, the administrative law judge must terminate the institution's eligibility. The administrative law judge

presiding at the hearing is not authorized to scrutinize the action of the nationally recognized accrediting agency or the State to determine whether the removal of accreditation or the State authorization was valid.

Similarly, § 600.31 of this rule provides that an institution that changes ownership may, under certain circumstances, be considered a new institution for purposes of determining eligibility status, and thus no longer satisfies the requirement that an institution be in existence for at least two years in order to qualify as an eligible institution. 34 CFR 600.5(a)(7), 600.6(a)(6), 600.7(a)(5). In any appeal of a revocation of eligibility on the ground that the institution failed to satisfy the two-year rule because of a change of ownership and control, the only issues that can be considered in that appeal are whether the institution had in fact changed ownership and control, and if it did, whether the further requirements regarding assumption of liabilities and responsibilities had been complied with by old and new owners. As with accreditation and State authorization, the eligibility of the institution is revoked if the trier of fact finds that the change has taken place and any of the requirements for change of responsibility have not been met.

3. In *Continental*, the court interpreted section 487(c)(1)(D) of the HEA to apply to a termination of eligibility under the title IV, HEA programs even if that termination is based upon the institution's failure to continue to satisfy the relevant definitional provisions. Under this interpretation, it logically follows that institutions whose definitional eligibility is in question are subject to the companion provisions of section 487(c) of the HEA as well, including the emergency action provisions contained in section 487(c)(1)(E). Accordingly, the Secretary is providing for emergency action procedures in 34 CFR 600.41(b) to apply to the title IV, HEA programs.

The Secretary notes that some circumstances commonly surrounding an institution's loss of eligibility for its failure to satisfy the relevant definitional provisions provide the archetypical circumstances under which the Secretary will take an emergency action. One such situation is if the Secretary is informed in writing by an accrediting agency that it has revoked the institution's accreditation. Under the provisions of section 487(c)(1)(D) of the HEA, the institution and its students continue to receive title IV, HEA program funds until the termination procedures are fully completed, even though, because accreditation is a prerequisite to qualifying as an eligible institution and participating in the title IV, HEA programs, the institution and its students are clearly ineligible to receive those funds. To prevent that misuse of title IV, HEA program funds, the Secretary expects to take an emergency action against an institution in every case where the institution fails to satisfy the statutory and regulatory requirements that define that institution as an eligible institution by reason of its loss of accreditation. For the same reason, the Secretary expects to take emergency action against an institution if the institution fails to satisfy the statutory and regulatory requirements for eligibility because of the institution's loss of State legal authority to provide postsecondary education.

4. The Secretary also makes other technical, conforming amendments to parts 600 and 668, including amendments in 34 CFR 600.41 that incorporate other existing termination provisions from 34 CFR part 668, such as the effective date of the loss of eligibility. The Secretary notes that the effective date of a loss of eligibility by reason of the failure of an institution, its location, or its program to satisfy the applicable definitions continues to be the date on which the failure first occurred, not the date on which the administrative law judge or the Secretary issues a decision to that effect. Further, as under current practice, the institution continues to be liable for the repayment of all title IV, HEA program funds it or its students received after the date the institution, its location, or its program ceased to be eligible regardless of whether the institution requests a hearing or the Secretary takes an emergency action against the institution.

Waiver of Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, as set forth below, the Secretary has determined that solicitation of public comment on these regulations would be impracticable, unnecessary, and contrary to the public interest, and that some of these regulations constitute interpretative rules or rules of agency procedure. Accordingly, the Secretary is waiving rulemaking procedures with respect to these regulations under 5 U.S.C. 553(b) (A) and (B).

1. *Emergency actions.* Section 668.83 of the Student Assistance General Provisions regulations provides the procedural requirements needed to carry out the emergency action provisions of section 487(c) (1)(E) of the HEA, which was added to the HEA by the recently enacted Student Loan Reconciliation Amendments of 1989. That regulatory section is primarily a restatement of section 487(c)(1)(E) of the HEA, which, in turn, virtually restates the current § 668.83. The last sentence of § 668.83(f) of this rule is a rule of agency procedure, while the consequences of an emergency action set forth in § 668.83(d) of the rule constitute the Secretary's interpretation of the statutory description of an emergency action.

The Secretary chooses to exercise his authority to waive rulemaking procedures with respect to the "emergency action" provisions of these regulations because, as evidenced by its statutory name and the congressional concerns expressed in section 487(c)(1)(E) of the HEA, the emergency action authority is intended to deal with ongoing or imminent misuse of Federal funds by institutions under the student financial assistance programs. Under this authority, the Secretary may act in advance of the time-consuming procedural steps pertaining to termination procedures, as set forth in section 487(c)(1)(D) of the HEA. These concerns evidence the need to adopt the emergency action provisions of the regulations without the delay that would be occasioned by a notice of proposed rulemaking.

2. *Treatment of loss of definitional eligibility as termination.* The Secretary is adopting the judicial interpretation of section 487(c)(1)(D) of the HEA that was set forth in the *Continental* case, so as to provide institutions with additional procedural protections. This, under 34 CFR 600.41, the Secretary affords an institution, if it so requests, a hearing on the record when the Secretary seeks to terminate that institution's eligibility to participate in the title IV, HEA programs based upon the institution's failure to satisfy the requirements that define the institution as an eligible institution. The hearing procedures the Secretary adopts are those already provided in termination actions under 34 CFR part 668, subpart G. The Secretary also adopts in § 600.41 other provisions in 34 CFR part 668 that are applicable to termination actions. By virtue of the Secretary's interpretation of section 487(c)(1)(D) of the HEA, the procedures applicable to termination actions under 34 CFR part 668 also apply to termination actions for cases of

institutional failures to satisfy definitional requirements.

The Secretary chooses to exercise his authority to waive rulemaking procedures with respect to providing these additional procedural protections because he would otherwise have to adopt hearing procedures on an *ad hoc* basis while awaiting the completion of rulemaking procedures. By adopting the termination procedures in 34 CFR part 668 for cases of institutional failures to satisfy definitional requirements, and by incorporating by reference certain provisions relevant to termination actions in § 668.25 and 34 CFR part 668, subpart G, the Secretary is making uniform to the greatest extent possible all termination procedures under title IV of the HEA.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected would be small institutions of higher education. The regulations establish procedures for implementing emergency actions and are not expected to have an impact on a substantial number of these institutions.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Assessment of Educational Impact

The Secretary had determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: June 21, 1990.

Lauro F. Cavazos,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Income Contingent Loan Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program, and 84.185 Robert C. Byrd Honors Scholarship Program)

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1094, 1141.

2. Part 600 is amended by adding a new subpart D containing § 600.40 and § 600.41; by redesignating § 600.32 as § 600.40; and by adding a new § 600.41 to read as follows:

Subpart D—Loss of Eligibility

* * * * *

§ 600.41 Termination and emergency action proceedings.

(a) If the Secretary believes that an institution as a whole, or at one or more of its locations, that was previously designated by the Secretary as an eligible institution under the HEA, does not satisfy the statutory or regulatory requirements that define that institution as an eligible institution, the Secretary may—

(1) Undertake to terminate the institution's eligibility under the title IV, HEA programs as a whole or at those locations under the procedural provisions applicable to terminations contained in 34 CFR 668.81, 668.86, 668.87, 668.88, 668.89, 668.90 (a)(1), (a)(4), (c)–(f), and 668.91; and

(2) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in the title IV, HEA programs.

(b) If the Secretary believes that an educational program offered by an institution, that was previously designated by the Secretary as an eligible institution under the HEA, does not satisfy relevant statutory or regulatory requirements that define that educational program as part of an eligible institution, the Secretary may—

(1) Undertake to terminate that educational program's eligibility under the title IV, HEA programs under the procedural provisions applicable to terminations described in paragraph (a)(1) of this section; and

(2) Initiate an emergency action under the provisions contained in 34 CFR 668.83 with regard to the institution's participation in the title IV, HEA programs.

(c) If the eligibility of an institution or one of its locations or educational programs is terminated under the procedures described in paragraph (a)(1) of this section because of the failure to satisfy the statutory or regulatory requirements that defined that institution or location as an eligible institution or as a part of an eligible institution, or that educational program as an eligible program, the effective date of the loss of eligibility is the date specified in § 600.40(a) with regard to the institution, location, or educational program, as applicable.

(d) If the eligibility of an institution or one or more of its locations is terminated under this section, the consequences of that termination with regard to the title IV, HEA programs are described in § 600.40(b) and 34 CFR 668.94, with the references therein to an "institution" considered to apply to the location. The consequences of termination of the eligibility of an educational program are described in § 600.10(c)(2), § 600.40(b), and 34 CFR 668.94, with the references therein to an "institution" considered to apply to the educational program.

(e) For purposes of this section, the title IV, HEA programs are those listed at 34 CFR 668.1(c).

(f) For purposes of this section, designation of eligibility by the Secretary with regard to an educational program includes a determination by the institution pursuant to § 600.10(c)(1) that an educational program is an eligible program.

(g)(1) In any proceeding under this section to terminate the eligibility of an institution, location, or educational program on the ground that the institution, location, or educational program no longer meets applicable requirements in this part with regard to accreditation or legal authorization, the sole issue that may be considered is whether the institution lacks the requisite accreditation or legal authorization. The administrative law judge has no authority to consider challenges to the propriety of the action of the accrediting agency or

governmental agency in revoking, terminating, or modifying that accreditation or legal authorization.

(2) In any proceeding under this section with regard to a termination of an institution or location on the ground that by reason of a change of ownership, the institution or location no longer meets the requirements of §§ 600.5(a)(7), 600.6(a)(6), and 600.7(a)(5) that an institution be in existence for at least two years, the only issues that may be considered are whether—

(i) The institution or location has undergone a change of ownership that results in a change of control within the meaning of § 600.31(c), and

(ii) If such a change has taken place, the requirements of § 600.31(a)(1)–(a)(5) have been satisfied.

(Authority: 20 U.S.C. 1094)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094 and 1141, unless otherwise noted.

4. Section 668.81 is amended by revising paragraphs (a)(1), (a)(2)(i), and (c) to read as follows:

§ 668.81 Scope and special definitions.

(a)(1) This subpart establishes rules for—

(i) An emergency action against an otherwise eligible institution;

(ii) The imposition of a fine upon an otherwise eligible institution; and

(iii) The limitation, suspension, or termination of the eligibility of an otherwise eligible institution to continue to participate in any or all of the title IV, HEA programs.

(2) * * *

(i) Satisfies the appropriate definition of the term "institution of higher education," "proprietary institution of higher education," "postsecondary vocational institution," or "vocational school" contained in 34 CFR part 600; and

* * * * *

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location or educational program because it fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the title IV, HEA program for which a designation of eligibility is sought; or

(2) An institution or location fails to qualify for initial certification to participate in any title IV, HEA program because it does not meet the factors of financial responsibility and standards of administrative capability contained in subpart B of this part.

* * * * *

4. Section 668.83 is revised to read as follows:

§ 668.83 Emergency action.

(a) Under an emergency action, the Secretary may—

(1) Withhold title IV, HEA program funds from an institution or its students; and

(2) Withdraw the authority of the institution to obligate or disburse funds under any title IV, HEA program.

(b)(1) A designated department official initiates an emergency action against an institution by sending the institution a notice by registered mail, return receipt requested.

(2) The emergency action takes effect on the date the notice is mailed to the institution by the designated department official.

(3) The notice states the basis on which the emergency action is based, the consequences of the emergency action to the institution, and that the institution may request an opportunity to show cause why the emergency action is unwarranted.

(c) The designated department official initiates an emergency action against an institution only if that official—

(1) Receives information, determined by the official to be reliable, that the institution is violating any provision of title IV of the HEA, any regulatory provision prescribed under the authority of title IV of the HEA, or any applicable special arrangment, agreement, or limitation;

(2) Determines that immediate action is necessary to prevent misuse of Federal funds; and

(3) Determines that the likelihood of loss outweighs the importance of the procedures for limitation, suspension, or termination contained in this subpart.

(d) After an emergency action becomes effective, an institution may not—

(1) Accept a Student Aid Report (SAR) from a student, or, in order to provide assistance under the Pell Grant program, disburse Federal or institutional funds, or credit a student's account;

(2) Provide an award letter or other commitment of aid under the Campus-based programs to a student, or, in order to provide assistance under any of the Campus-based programs, disburse Federal or institutional funds, or credit a student's account; or

(3) Certify an application for a loan under any of the Guaranteed Student Loan Programs, disburse to a student the proceeds of a loan made under any of the Guaranteed Student Loan Programs, or retain the proceeds of a loan made under any of the Guaranteed Student Loan Programs.

(e) The designated department official provides the institution, if it so requests, with an opportunity to show cause that the emergency action is unwarranted.

(f) An emergency action may not exceed 30 days unless the Secretary initiates a limitation, suspension, or termination proceeding under this subpart against the institution within those 30 days, in which case the designated department official may extend the emergency action until the completion of those proceedings, including any appeal to the Secretary. The continuation, modification, or cessation of the emergency action during the period described in this paragraph is at the sole discretion of the designated department official.

(Authority: 20 U.S.C. 1094).

[FR Doc. 18343 Filed 8–6–90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
August 7, 1990

Part IV

Department of Education

34 CFR Parts 600 and 668

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; Notice of Proposed Rulemaking: Cross-Reference

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840-AB38

Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking: cross-reference.

SUMMARY: In this issue of the **Federal Register** the Secretary has promulgated final regulations amending the regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions regulations. The amendments implement certain provisions of the "Student Loan Reconciliation Amendments of 1989," and make certain revisions adopting recent case law interpreting the HEA. By this notice, the Secretary requests public comment on those regulatory amendments.

The text of the regulatory amendments on which the Secretary invites comments is published in the Rules and Regulations section of this issue of the **Federal Register**. The amendments have been adopted as final regulations and will govern until the Secretary issues new regulations based on public comment.

DATES: Comment must be received on or before September 21, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Carol Sperry, Director, Division of Eligibility and Certification, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: John Frohlicher, Division of Eligibility and Certification, U.S. Department of Education, 400 Maryland Avenue, SW., room 3522, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20202-5323, telephone (202) 708-5794.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The small entities affected would be small institutions of higher education. The regulations would establish procedures for implementing emergency actions and are not expected to have an impact on a substantial number of these institutions.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3030, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 600

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Supplemental Educational Opportunity Grant Program; 84.032 Guaranteed Student Loan Program; 84.032 PLUS Program; 84.032 Supplemental Loans for Students Program; 84.033 College Work-Study Program; 84.038 Income Contingent Loan Program; 84.038 Perkins Loan Program; 84.063 Pell Grant Program; 84.069 State Student Incentive Grant Program; and 84.185 Robert C. Byrd Honors Scholarship Program.)

Dated: June 21, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90-18344 Filed 8-6-90; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
August 7, 1990

Part V

Department of Health and Human Services

Indian Health Service

Core Data Set Requirements (CDSR); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Core Data Set Requirements

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Indian Health Service Core Data Set Requirements (CDSR), with an Opportunity to Comment.

DATES: Written comments must be received by November 6, 1990.

ADDRESS: Written comments on the Indian Health Service (IHS) Core Data Set Requirements may be sent to Jack Markowitz, Indian Health Service, Room 5A–09, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be made available for public inspection at this address from 8:30 a.m. to 5 p.m., Monday–Friday beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jack Markowitz, telephone (301) 443–0750 or Anthony D'Angelo, telephone (301) 443–1180. (These are not toll free numbers.) Copies of the forms referenced as being contained in Appendix A may be obtained by contacting Anthony D'Angelo, Indian Health Service, Room 6–41, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: The IHS is proposing a set of core program data elements that all IHS programs and facilities would be required to submit for the IHS National data base.

These core data requirements are necessary for good management purposes and to fulfill Congressional and other mandatory reporting requirements including the requirements for meeting the management information needs of IHS and tribal contractors set out in section 602 of the Indian Health Care Improvement Act, Public Law 94–437, as amended (25 U.S.C. 1662). The proposed core data requirements were developed by a joint IHS and Tribal Representative Work Group over a period of seven months. Two meetings were held—December 1988 and June 1989. Those involved included 11 IHS personnel, 8 tribal personnel, and 9 persons representing the various IHS information systems. The efforts of the working group were a major step toward reconciling the differences in data priorities between the IHS and providers and ensuring the development of a core data set that has beneficial uses and reasonable costs.

The core data requirements are a subset of the data that is already being collected locally by IHS providers in order to manage effective health service programs. The data are used to define current health status (e.g. prevalance of diabetes); to identify problems requiring attention (e.g., high number of facility visits related to accidents); and to evaluate effectiveness of intervention programs (e.g., reduced infant deaths related to increased prenatal care). The core data set is needed for the following purposes:

Quality assurance;
Epidemiology;
Problem identification;
Identification of population in need;
Resource management/allocation;
Budget support and justification;
Facilities and program planning; and
National billing.

Specifically, the elements of the core data set are derived from those elements already embodied within the following IHS information systems:

Patient Registration System
Ambulatory Patient Care (APC) System
Direct Inpatient Care System
Contract Health Services Inpatient System
Contract Health Services Outpatient System
Dental Reporting System
Facility Data System
Environmental Health Reporting System
Mental Health and Social Services Reporting System
Alcoholism Treatment Guidance System (ATGS)/Chemical Dependency Management Information System (CDMIS)
Community Health Representative Information System (CHRIS)
Community Health Activity Reporting System
Health Education Resource Management System (HERMS)
Nutrition and Dietetic's Program Activities Reporting System
Clinical Laboratory Workload Reporting System
Generic Activities Reporting System
Fluoridation Reporting Data System

Each of the above systems has its own manual. This notice consolidates and summarizes the data submission formats, edits and schedules from these existing information systems. The core data set reduces the total number of data elements required from the IHS health care providers and the frequency of reporting, for certain elements, has been reduced from monthly to quarterly. Moreover, for half of the program components involved, data need only be reported for a sample of the services provided.

The IHS wants to use the social security number (SSN) as the unique patient identifier in the IHS National data base. Patients may voluntarily disclose their SSN to health care providers after being informed of: (1) The purposes of collecting the SSN (for uniquely identifying patient records, reducing duplicative counting of cases of a disease, improving patient and health program management, and third party billing); (2) refusal will not result in denial of services; and (3) the provider must submit the SSN to IHS. If the health care provider does not have the SSN, then it must submit a 9-digit number for each patient.

This notice is being sent to all IHS Area Offices for distribution to area tribes for comment on the core data set requirements (e.g., numbers and types of data elements, frequency and scope of reporting, etc.). All comments from tribes and other interested parties received by the close of the comment period (insert 90 days from the publication date) will be considered in the revision of these CDSR's. The revised program reporting requirements will be submitted to OMB for clearance as required by the Paperwork Reduction Act. After these requirements have been cleared, a final notice will be published.

For now, Indian tribes and tribal organizations with contracts or grants under authority of the Indian Self-Determination Act, Public Law 93–638, as amended, will continue to be governed by the data collection and reporting requirements of the contract or grant as well as any applicable laws, regulations, and policies. The extent of any future applicability of the CDSR to Public Law 93–638 contracts and grants will be determined in the final regulations implementing the 1988 amendments to Public Law 93–638. When the IHS publishes the notice of proposed rulemaking seeking comments on the regulations for Public Law 93–638, the proposed data set requirements will be included.

This notice also does not include the core data reporting requirements of Urban Indian organizations funded under Title V of the Indian Health Care Improvement Act, Public Law 94–437, as amended. Reporting requirements of such Urban Programs have already been established in the instruction manual, "Urban Health Programs, Common Reporting Requirements" and are incorporated into contract requirements. The IHS plans to include these Urban Indian program core data reporting requirements in the final publication. Urban Programs reporting requirements will be in agreement with those information collection activities approved by OMB under 0917–0007.

As long as their own data collection and reporting system provides for the

timely submission of accurate and complete data meeting the core data set requirements, the IHS contractors and grantees will not be required to use the collection and reporting system used by IHS. The contractor/grantee data system must meet the requirements of the Security Act of 1987, Public Law 100–275, which are also applicable to the IHS directly operated programs. The IHS will provide technical assistance to tribal contractors and grantees to convert their data into the formats and appropriate transmission media required for IHS data collection and reporting.

All data will, unless otherwise agreed upon, be sent to the Division of Data Processing Services (DDPS) in Albuquerque through the appropriate Area Office. Each IHS Area will establish its own procedures for reporting of data and will monitor compliance with reporting requirements consistent with applicable laws, regulations, policies, and grant and contract instruments. Contractors and grantees are responsible for correcting problems regarding incomplete and inaccurate data.

Contractors and grantees may use IHS forms or collect the required data in any manner consistent with their operations. The submission of these data must meet the format and data requirements of the IHS information systems.

A. Patient Registration System

1. Reporting Requirements

a. Data on new patients, or changes to previously registered patients, is submitted at least quarterly through the appropriate Area Office to the Division of Data Processing Services (DDPS) in Albuquerque. Data must be submitted monthly for central billing purposes.

b. Data must be received by the DDPS by the 20th of the month to ensure it being included in month-end registration reports.

c. The IHS maintains a complete registration data base for each Area on the IHS central computer at DDPS. The types of activity that are reported include:

(1) Registration of new patients.

(2) Changes in any of the required registration fields (i.e. name, residence) for a patient.

(3) Deletion of an entire patient record. (This would only be done when the patient is registered in error, or is registered twice at the same facility under two different health record numbers).

(4) Delete and merge to another health record number. This is done when a patient is registered twice at two different facilities, and you wish to merge the two records together by deleting one and merging the data to the second number indicated.

Normally the last two activities will only be performed by the registration data base administrator at the Area Office.

2. Record Formats

New patient data, or modifications to patient data, are submitted in a 310 character record as shown in Figures A–1 through A–3. Generally data from different facilities will be given different batch numbers to facilitate error correction, since all errors are listed by batch number, but this is not required.

Transactions to delete a patient record entirely, or delete a patient and merge the data into another health record number, require a different format, as shown in Figures A–4 and A–5. For these transactions, a separate batch header is submitted followed by any number of delete/merge transactions. The patient ID number used for these transactions is not the normal health record number, but the unique patient ID used in the centralized registration system. This number consists of three alpha codes indicating the Area, SU and facility followed by six numerics.

The delete/merge transactions must have a different batch number than other transactions, and the individual delete/merge transactions must immediately follow the delete/merge header. However, regular batches and delete/merge batches can be combined on the same tape.

Samples of the IHS patient registration forms are included in Appendix A.

3. Transmission Media

Registration records should be sent by the Area to DDPS on nine track, unlabeled EBCDIC tapes, at 1600 or 6250 bits per inch (BPI). Records should be blocked at 10 records per block. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Facility Registration System

An ANSI MUMPS facility registration system is available to any covered contractor that wishes to implement it. This system provides the capability of generating the transactions described above automatically, and creating a tape cartridge (or transaction file for transmission by telecommunications) to be sent to DDPS for all new and/or modified patients.

REGISTRATION FORMAT NEW AND/OR MODIFIED TRANSACTIONS

Position	Field	Edits	Required fields
1–4	Batch Number	Numeric, Right Justified	
5–10	Facility Code: 5–6 Area Code, 7–8 Service Unit Code, 9–10 Facility Code.	Area-SU-Facility Code. Must be in IHS Facility Table	X
11–16	Health Record Number	Numeric, Right Justified	X
17–58	Patient Name: 17–36 Last, 37–47 First, 48–58 Middle	See Note 1. Last and First Name Data must be left justified	X
59–60	Classification Code	Numeric, Right Justified. Codes must be in range 01–33	
61–67	Date of Birth: 61–62 Month, 63–64 Day, 65–67 Year (Last three digits).	Must be less than current date. Month not greater than 12, day not greater than 31.	X
68	Sex	M or 1 for Male; F or 2 for Female	X
69–77	Social Security Number	Numeric, Right Justified	X
78–80	Tribe of Membership Code	Numeric, right justified. Must be valid code in IHS Tribe Table	X
81	Eligibility for Services Code	Y or N	X
82–113	Father's Name: 82–101 Last, 102–112 First, 113 Middle Initial	See Note 1	
114–120	Community of Residence: 114–116 Community Code, 117–118 County Code, 119–120 State Code.	Community-County-State Code, must be in IHS Community Table.	X
121–176	Mailing Address: 121–150 Street/Box Number, 151–165 Town, 166–167 State, 168–176 Zip.	Alpha-Numeric. If submitted, town and state also required. Alphabetic, left justified. If submitted, state also required. Alphabetic. Required if town submitted. Numeric, right justified.	
177–208	Mother's Name	See Note 1	
209–214	Date of Death (MM/DD/YY)	Same Edit as Date of Birth	X As Available.

REGISTRATION FORMAT NEW AND/OR MODIFIED TRANSACTIONS—Continued

Position	Field	Edits	Required fields
215–235	Medicare A: 215 Eligible, 216–224 Enrollment Number, 225–229 Enrollment Suffix, 230–235 Date of Eligibility (Mo/Da/Yr).	If central billing, all fields required. Y or N (N will delete an authorization previously submitted). Numeric, all digits required. Alphanumeric, left justified. Must be valid code in Medicare suffix table. Month and Year Required. Standard Date Edit..	X
236–256	Medicare B	Same as Medicare A	X
257–277	Medicare AB	Same as Medicare A	X
278–298	Medicaid: 278 Eligible, 279–287 Eligibility Number, 288–292 Suffix, 293–298 Date of Eligibility (MM/DD/YY).	If central billing, all fields required. Y or N (N will delete an authorization previously submitted). No Edit. No Edit. Month and Year Required. Standard Date Edit.	X
299	Veteran	Y, N or Blank	X
300	Blue Cross	Y, N or Blank	
301	Other Insurance	Y, N or Blank	X
302	CHS Eligibility	Y, N or Blank	
303	Patient Assignment/Release Signature on File	Y, N or Blank. Required to initiate billing Medicare	
304	Add/Modify Code	1—New Patient 2—Modification	
305–310	Release Date (MM/DD/YY)	Standard Date Edit. Required for billing	

Note 1: All name fields must be alphabetic with the following special characters allowed:

- One set of left and right parentheses imbedded in name.
- One occurrence of an apostrophe.
- Two occurrences of a period.
- Five occurrences of a dash, or hyphen.
- No lower case.

Figures A–1—A–3

REGISTRATION FORMAT DELETE/MERGE TRANSACTIONS

Position	Field	Description	Required
		Header Record	
1–3	Identifier	Three Vertical Bars (Hex "4F" Characters)	X
4–5	Area Code	Standard Area Code of the Registration Data Base.	X
6–11	Area/SU/FAC Code	Area, Service Unit, Facility Code of the Submitting Facility	X
12–17	Area/SU/FAC of Health Rec. No.	Code Prefix for Health Record Numbers Being Used. Normally Duplicate of Positions 6–11.	X
18	Not used		
19–22	Batch Number	Numeric, Right Justified	X
23–25	No Forms	Number of Transactions in the Batch	X
26–31	Date	Date submitted (YYMMDD)	X
32–34	Initials of Requestor	Optional	
35–60	Comments	Optional—For Local use	
61–80	Not Used		
		Transaction Record	
1	Identifier	A "?" in Position 1.	X
2–4	Initials & Sex	Initials (Last, First) and Sex of Patient to be deleted	X
5–13	Patient ID	Patient ID to be deleted. (Three Alpha and six numerics). This is the Centralized Registration unique ID Number.	X
14–15	Transaction type	"99"	X
16	Not used		
17–22	Date	Date submitted (YYMMDD)	X
23–25	Asterisks	"* * *"	X
26–34	Patient ID	Patient ID to which data is to be merged.	X
35	Move Demographic	Flag to indicate whether to move demographic data from deleted record, or to retain demographic data of the record to which moved. "1" indicates to retain demographic data of deleted record, "2" to retain data of receiving record.	X
36–37	Facility	Facility Code submitting form	X
38–67	Submitted by	Name of person submitting form	X

To delete a patient, Positions 1–25 are required. To delete and merge to a new patient, Positions 1–37 are required.

Figures A–4—A–5

B. Ambulatory Patient Care System (APC)

1. Reporting Requirement

a. An Ambulatory Patient Care (APC) record is required for an encounter between a patient and health care provider in an organized clinic within an IHS facility (including covered contractors) where service resulting from the encounter is not part of an inpatient stay. The patient or his/her representative (representative only to pick up prescription) must be physically present at the time of service. Also, a note must be written in the medical record by a licensed, credentialled or other provider qualified by the medical staff or facility administrator.

b. Part 4, chapter 3, section 1 of the Indian Health Manual, provides complete definitions and procedures for reporting into the APC system. The definition of an APC visit given in 1a above is somewhat different and supersedes the definition in the IHS Manual. The IHS Manual will be changed to reflect the new definition.

c. Each Area will define procedures for collecting APC data and creating automated records in the format described in the next section. Options include:

(1) Key-entry of forms at the Area
(2) Key-entry of forms by a contractor
(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) at Albuquerque by the 15th of the month. Data must be submitted monthly for central billing purposes.

2. Record Formats

a. The APC record contains individual patient encounter information. Each record is 200 characters in length.

b. The format of the APC record is shown in Figures B–1 through B–3.

c. A sample of the IHS APC form is included in Appendix A.

3. Transmission Media

a. APC records for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS APC Data entry system

a. There is available an RPMS ANSI MUMPS APC data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

5. RADEN APC Data entry system

a. There is available a RADEN Data Entry program which allows for records to be keyed at the Area level, transmitted and forwarded from the Area to DDPS by telecommunications.

6. Community Health Aide Program

a. An Ambulatory Patient Care (APC) or equivalent record is required for an encounter between a community health aide and a patient.

b. The format of the required record is shown in Figures B–1 through B–3. A sample of the IHS APC form is included in Appendix A.

c. The Alaska Area Office and the contractor will need to determine how the required data will be collected and transmitted to the Area.

DIRECT OUTPATIENT SYSTEM RECORD*

Position	Field	Required
1–2	Record Code. Always "15"	X
3–4	Area Code	X
5–6	Service Unit Code	X
7–8	Service Location Code (Facility Code)	X
9–14	Date of Service (MMDDYY)	X
15	Day of Week (Sunday=1, Saturday=7)	
16–21	Patient Health Record Number	X
22–30	Social Security Number	X
31–36	Date of Birth (MMDDYY)	X
37	Sex	X
38–40	Tribe of Membership Code	X
41–43	Optional Code (Area options)	
44–50	Community of Residence: 44–46 Community Code, 47–48 County Code, 49–50 State Code	X
51	Time of Day Code; "1" 8AM–Noon; "2" Noon–5PM; "3" 5PM–10PM; "4" 10PM–8AM	
52–53	Type of Clinic (IHS Table)	
54–61	Service Rendered by (Discipline Code): 54–55 Primary Provider Discipline, 56–57 Other Provider Discipline, 58–59 Other Provider Discipline, 60–61 Other Provider Discipline.	X
62–71	Immunizations Given	X
	62 1 for Tetanus Toxin	
	63 2 for DT	
	64 3 for DPT	
	65 4 for Polio	
	66 5 for Measles	
	67 6 for Rubella	
	68 7 for Small Pox	
	69 8 for Mumps	
	70 9 for Influenza	
	71 0 for Other	
72	All Immunizations Current (1 yes; 2 no)	X
73	Immunization Register Update	
74	Skin Test Result	
	"1" PPD 0–4M	
	"2" PPD 5–9MM	
	"3" PPD 10–19M	
	"4" PPD 20+MM	
	"5" TINE Neg	
	"6" TINE Pos	
75	Purpose of Skin Test	
	"1" Routine	
	"2" Contact	
	"3" Suspect	
	"4" School	
76	INH Prophylaxis	
	"1" 1 Year Completed	
	"2" Start	
	"3" Continue	
	"4" Discontinue	
77–78	Next TB Appointment in months	

DIRECT OUTPATIENT SYSTEM RECORD*—Continued

Position	Field	Required
79–82	TB Diagnosis	
	79 "1" 1st visit, "2" revisit	
	80–82 Three digit APC code (005–012)	
83–93	Maternal Health and Family Planning:	
	83 Marital Status (1 Married; 2 Not Married)	
	84–85 Gravida	
	86–87 Number of Living Children	
	88 Trimester of 1st Prenatal Visit	
	89 "1" 1st visit for prenatal care	
	"2" revisit for prenatal care	
94–96	Not Used	
97–102	IHS Unit No. at Parent Facility	
103–107	Accidents (required for 1st visits of APC Codes 700–792)	
	103–104 Cause of Accident (01–19)	X if appropriate.
	105–106 Place (01–12)	X if appropriate.
	107 Alcohol related (1 yes; 2 no)	X if appropriate.
108–113	Area optional code	
114–117	ICD/APC Codes for Injury	
	114 "1" 1st visit; "2" revisit	
	115–117	X if appropriate.
118–121	ICD/APC Codes for Other Problems/Clinical Imp	
	118 "1" 1st visit, "2" revisit	
	119–121 APC code	X if appropriate.
122–132	Diagnostic Services Requested	
	122 "0" or blank for none	
	123 "1" for Urinalysis	
	124 "2" for Hematology	
	125 "3" for Chemistry	
	126 "4" for Bacteriology	
	127 "5" for Serology	
	128 "6" for Pap	
	129 "7" for ECG/EKG	
	130 "8" for Other	
	131 "1" for X-Ray—Chest	
	132 "2" for Other X-ray	
133	Minor Surgical Procedures ("1" if yes)	
134	Disposition Code	
	"1" Return by appointment	
	"2" Return PRN	
	"3" Admit to IHS Hospital	
	"4" Admit to non-IHS Hospital	
	"5" Refer for OP Consultation—IHS	
	"6" Refer for OP Consultation—non-IHS	
	"7" Did not Answer	
135–187	Unused, except for some Area-specific fields	
188–191	Surgical Procedure (ICD–9–CM Code)	
192–200	Unused, except for some Area-specific fields	

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

Figures B–1—B–3

C. Direct Inpatient Care System (INP)

1. Report Requirement

a. A direct Inpatient Clinical Brief is required for any person who is admitted to an Indian Health Service facility or a facility operated by a covered contractor.

b. Part 4, chapter 3, section 2 of the Indian Health Manual provides complete definition and procedures for reporting into the Direct Inpatient System.

c. Each Area will define procedures for collecting Inpatient data and creating automated records on the format described in the next section. Options include:

(1) Key-entry of forms at the Area
(2) Key-entry of forms by a contractor
(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) at Albuquerque by the 15th of the month. Data must be submitted monthly for central billing purposes.

2. Record Formats

a. The record format for the Direct Inpatient Clinical Record Brief, is shown in Figures C–1 through C–3. Each record is 160 characters in length.

b. A sample of the IHS Clinical Record Brief is included in Appendix A.

3. Transmission Media

a. Clinical Record Brief for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the tribal contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data entry system

a. There is an RPMS ANSI MUMPS facility based Direct Inpatient data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

5. RADEN Data entry system

a. There is a RADEN Data Entry program which allows for Direct Inpatient records to be keyed at the Area level and forwarded from the Area to DDPS by telecommunications.

DIRECT INPATIENT CLINICAL RECORD BRIEF*

Position	Field	Required
1-2	Record Code. Always "18"	X
3-8	Patient Health Record Number	X
9-17	Social Security Number	X
18-23	Date of Birth (MMDDYY)	X
24	Sex	X
25-27	Tribe of Membership Code	X
28-30	Optional Code (Area Options)	
31-37	Community of Residence: 31-33 Community Code, 34-35 County Code, 36-37 State Code	X
38-39	Classification Code	
40-41	Area Code	X
42-43	Service Unit Code	X
44-45	Facility Code	X
46	Admission Code	X
47-48	Clinical Service Admitted to Code	
49-54	Admission Date (MMDDYY)	X
55-60	Disposition Date (MMDDYY)	X
61-63	Number Hospital Days	
64-67	Third Party Payers: 64 Medicaid, 65 Medicare, 66 VA, 67 Other	
68	Unused	
69-73	ICD Code 1 (Principal Diagnosis)	X
74	Hospital Acquired "1"	X if appropriate.
75-79	ICD Code 2	X if appropriate.
80	Hospital Acquired "1"	X if appropriate.
81-85	ICD Code 3	X if appropriate.
86	Hospital Acquired "1"	X if appropriate.
87-91	ICD Code 4	X if appropriate.
92	Hospital Acquired "1"	X if appropriate.
93-97	ICD Code 5	X if appropriate.
98	Hospital Acquired "1"	X if appropriate.
99-103	ICD Code 6	X if appropriate.
104	Hospital Acquired "1"	X if appropriate.
105-108	1st ICD Operation Code	X if appropriate.
109	Diagnosis Number (Appropriate Code)	
110	Infection "1" if checked	X if appropriate.
111-114	Operating Physician Code	
115-118	2nd ICD Operation Code	X if appropriate.
119	Diagnosis Number (Appropriate Code)	
120	Infection "1" if checked	X if appropriate.
121-124	3rd ICD Operation Code	X if appropriate.
125	Diagnosis Number (Appropriate Code)	
126	Infection "1" if checked	X if appropriate.
127	Disposition Code (1-7)	X
128-133	Facility Transferred to Code	
134-135	Clinical Service Discharged from	
136-137	Number of Consultations	
138-141	Accident Code (No Leading "E") (E800-E999)	X if appropriate.
142-143	Accident Place Code	X if appropriate.
144-148	Cause of Death (ICD Code)	X if appropriate.
149-152	Attending Physician Code	
153	Nurse-Midwifery Code	
154-160	UnUsed	
161-170	Operating Physician EIN	X if appropriate.
171-180	Attending Physician EIN	X

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

Figures C-1—C-3

D. Contract Health Services (CHS) Inpatient System (CHI)

1. Reporting Requirement

a. A Contract Health Service Purchase/Delivery Order for Hospital Services Rendered (HRSA-43) is required for all hospital inpatient care provided to Indian and Alaska Native patients in contract community facilities. This includes CHS administered by covered contractors.

b. Part 4, chapter 3, section 3 of the Indian Health Service Manual provides complete definition and procedures for reporting into the Contract Inpatient System.

c. Each Area will define procedures for collecting Contract Inpatient data and creating automated records in the format described in the next section. Options include:

(1) Key-entry forms at the Area
(2) Key-entry forms by a contractor
(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system

d. Records will be consolidated at the Area level and forwarded at least quarterly to the Division of Data Processing Services (DDPS) by the 5th of the month.

2. Record Formats

a. There is only one record format for the Contract Health Service Purchase/Delivery Order for Hospital Services Rendered as shown in Figures D1 and D2. Each record is 185 characters in length.

b. A sample of the IHS Contract Health Service Purchase/Delivery Order for Hospital Services Rendered is included in Appendix A. Since this is a government purchase order form, it is recommended that a similar form in terms of data elements be developed for use by tribal contractors.

3. Transmission Media

a. Contract Inpatient Authorizations are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data entry system

a. There is an RPMS ANSI MUMPS Contract Inpatient data entry program which allows for records to be keyed locally, transmitted to the Area and forwarded from the Area to DDPS by telecommunications.

5. RADEN Data entry system

a. There is a RADEN Data Entry program which allows for Contract Inpatient Authorization records to be keyed at the Area level and forwarded from the Area to DDPS by telecommunications.

6. Fiscal Intermediary

a. IHS has contracted with a Fiscal Intermediary to perform the management of that portion of the CHS program administered by the IHS.

CONTRACT HEALTH SERVICE PURCHASE/DELIVERY ORDER FOR HOSPITAL SERVICES RENDERED* HRSA-43

Position	Field	Required
1-2	Record Code. Always "19"	X
3-9	Authorization Number	X
10-15	Patient Health Record Number	X
16-24	Social Security Number	X
25-30	Date of Birth (MMDDYY)	X
31	Sex (1=Male, 2=Female)	X
32-34	Tribe Code	X
35-37	Optional Code (Area Options)	
38-44	Community of Residence: 38-40 Community Code, 41-42 County Code, 43-44 State Code	X
45-50	Authorizing Facility (Area-Service Unit-Facility)	X
51-52	Provider Type	X
53-62	Provider Code (EIN)	X
63-68	Admission Date (MMDDYY)	X
69-74	Discharge Date (MMDDYY)	X
75-77	Total Hospital Days	
78	Disposition	X
79-83	ICD Code 1 (Principal Diagnosis)	X
84-88	ICD Code 2	X if appropriate.
89-93	ICD Code 3	X if appropriate.
94-98	ICD Code 4	X if appropriate.
99-103	ICD Code 5	X if appropriate.
104-107	ICD Operation Code 1	X if appropriate.
108-111	Unused	
112-115	ICD Operation Code 2	X if appropriate.
116-119	ICD Operation Code 3	X if appropriate.
120-124	ICD Newborn Diagnosis	
125	Newborn Death Indicator	
126-129	Attending Physician Code	
130-133	ICD External Cause or Injury	X if appropriate.
134-135	Place of Injury	X if appropriate.
136-143	Charges—to IHS *only* $ and cents	X
144	Full/Part Pay (1=Full, 2=Part)	X
145-175	Unused	
176-185	Attending Physician EIN	X

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

Figures D-1—D-2

E. Contract Health Services (CHS) Outpatient System (CHO)

1. Reporting Requirement

a. A Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental (HSA-64) is required for all outpatient services to Indian and Alaska Native patients in contract community facilities. This includes CHS administered by covered contractors.

b. Part 4, chapter 3, section 3 of the Indian Health Service Manual provides complete definition and procedures for reporting into the Contract Outpatient System.

c. Each Area will define procedures for collecting Contracting Outpatient data and creating automated records in the format described in the next section. Options include:

(1) Key-entry forms at the Area
(2) Key-entry forms by a contractor
(3) Key-entry at the local facility with an RPMS ANSI MUMPS data entry system.

d. Records will be consolidated at the Area level and forwarded to the Division of Data Processing Services (DDPS) at least quarterly by the 5th of the month.

2. Record Formats

a. There is only one record format for the Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental as shown in Figures E1 and E2. Each record is 110 characters in length.

b. A sample of the Purchase Order for Contract Health Service Other Than Hospital Inpatient or Dental form is included in Appendix A. Since this is a government purchase order form, it is recommended that a similar form in terms of data elements be developed for use by tribal contractors.

3. Transmission Media

a. Contract Outpatient Authorizations are generally mailed to DDPS on nine track unlabeled, unblocked EBCDIC tapes. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS Data entry system

a. There is an RPMS ANSI MUMPS Contract Outpatient data entry program which allows for records to be keyed

locally, transmitted to the Area and forwarded from the Area to DDPS by telecommunications.

5. RADEN Data entry system

a. There is a RADEN Data Entry program which allows for Contract Outpatient Authorization records to be keyed at the Area level and forwarded from the Area to DDPS by telecommunications.

6. Fiscal Intermediary

a. IHS has contracted with a Fiscal Intermediary to perform the management of that portion of the CHS program administered by the IHS.

PURCHASE ORDER FOR CONTRACT HEALTH SERVICE OTHER THAN HOSPITAL INPATIENT OR DENTAL * HSA-64

Position	Field	Required
1-2	Record Code. Always "20"	X
3-9	Authorization Number	X
10-15	Patient Health Record Number	X
16-24	Social Security Number	X
25-30	Date of Birth (MMDDYY)	X
31	Sex (1=Male, 2=Female)	X
32-34	Tribe Code	X
35-37	Optional Code (Area Options)	
38-44	Community of Residence	
	38-40 Community Code	X
	41-42 County Code	X
	43-44 State Code	X
45-50	Authorizing Facility (Area-Service Unit-Facility)	X
51-52	Provider Type	X
53-62	Provider Code (EIN/SSN)	X
63-69	HSA-43 Authorization Number	
70-75	Date of Service (MMDDYY)	X
76	Unused	
77-79	Outpatient Diagnostic Code 1	X if appropriate.
80	1st or Revisit Code	X if appropriate.
81-83	Outpatient Diagnostic Code 2	X if appropriate.
84	1st or Revisit Code	X if appropriate.
85-86	Number of Visits	X if appropriate.
87-92	Charges	X
93-94	Immunization 1	X
95-96	Immunization 2	X
97-98	Immunization 3	X
99-100	Immunization 4	X
101-102	Immunization 5	X
103-105	Maternal Health	
	103-104 Gravida	
	105 1st Trimester	
106	Full/Part Pay (1=Full, 2=Part)	X
107-110	Surgical Procedure (ICD-9-CM Code)	
111-115	HCPCX Procedure Code	

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

Figures E-1—E-2

F. Dental Services and Needs Reporting System

1. Reporting Requirement

a. A description of dental services provided will be submitted for each patient visit to either a (1) direct care facility or a (2) contract provider. In addition, specified data will be submitted on a sample basis from oral exams to provide epidemiologic and needs data for program monitoring or evaluation and for determining resource requirements.

b. Dental treatment provided will be identified using the standard nomenclature of the American Dental Association (see list of codes marked F-1) and include the number of units of each service provided, and for contract dentist, the fee for each service.

c. Non-clinical dental health services, such as education or other organized activities for target groups, may be reported using standard codes on the dental procedure code list (F-1), or by using other IHS reporting systems described in this document (HERMS, Community Health Activity Reporting System, CHRIS, RPMS Generic Activities Reporting System, etc.).

d. The procedures for collecting the required data for centralized processing by the IHS Division of Data Processing Services (DDPS) will be defined by each area program. The options available for key-entering the data into a computer are:

1. weekly submission to a key-entry contractor (IHS or Tribal source) who transmits the data to the IHS.

2. in-house local key entry into RPMS database with submission of extracted data to area office by the end of each month.

3. local key-entry into non-RPMS database with the submission of formatted records to the DDPS by the end of the month.

e. Oral exam records data will be collected periodically among an adequate number of dental patients of all ages for processing by the IHS to monitor the oral health status and treatment needs of the population being served. The protocol for selecting/sampling of patients and completing examination records is described in section III of the Oral Health Program Guide published by the IHS. The required data from exams will include:

1. Tooth status: sound, decayed, recurrent decay, missing, filled, filled and decayed, sealed, sealed and decayed, unrestorable and needs extraction (XC, XP, XO, XT trauma), X (pros.), fractured, replaced, crowned (cast restoration).

2. Periodontal status: Using C.P.I.T.N. score by specific mouth sextants (UR,

tooth #1–5), UA (#6–11), UL (#12–16), LL (#17–21), LA (#22–27), LR (#28–32).

3. Treatment Needs—reported using ADA codes or other codes given in the protocol given in section III: all teeth needing restoration by number of surfaces involved, extractions, other surgery, full or partial dentures needed per arch and possession of existing dentures, endodontic needs, fixed bridges needed including number of pontics, orthodontic status (limited, comprehensive, treatment in progress, or completed).

f. Options for collecting and submitting exam data include:

1. Submission of required data directly to the IHS in hard copy using standard forms (as shown in Appendix A).

2. Submission of data in automated record format from RPMS or non-RPMS database.

g. Data input forms used by the IHS are included in Appendix A. Except for the Oral Health Status Form, the use of these forms is not required, but is highly recommended for use as part of the patient's record and for data submission. They include:

(1) Patient Service Record (HRSA–42–1); (2) Record, Clinic and Doctor Identification (HSA–42–2); (3) Services Provided—Dental Progress Notes (HRSA–42–2); (4) Purchase Order for and Report of Contract Dental Care (HSA–57) (Since this is a government purchase order form, it is recommended that a similar form be developed for use by tribal contractors.); and (5) Oral Health Status Form.

2. Format of Data Processing Records

a. The required automated record format for processing dental services data is shown in Figures F–1 through F–3.

b. The automated record for processing oral examination data is shown in Figures F–4 and F–5.

c. Transmission to DDPS.

1. Data will be transmitted to DDPS on a periodic basis as defined by area policy on an unlabeled EBCIDIC tape, blocked 20 records per block.

2. The cut-off date at DDPS for inclusion in monthly reports is the 5th working day of each month.

3. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. Oral health status data will be transmitted and processed separately from dental services data.

3. The Data Elements for Dental Epidemiology and Services are as Follows

HEALTH STATUS

Date Element	Required
Demographics*	X
Health Needs Assessment	X
Dental caries (decay) index	X
Prosthodontic status	X
Periodontal status	X
Orthodontic status	X
Oral pathology status	X
Treatment Required	X
SERVICES PROVIDED	
Patient demographic information*	X
Mode of delivery (direct/contract)	X
Date of Visit	X
Provider/Location	X
Cost of Visit (contract only)	X
Services Provided:	
ADA procedure code	X
Units	X
Cost	X

*Not all patient identification data elements will need to be reported on every record in a fully integrated information system.

RECORD LAYOUT FOR PROCESSING DENTAL SERVICES DATA

[Used for Both Direct and Contract Services]

Input Record Format for Processing Dental Services Data by the IHS Data Center at Albuquerque

Field position and size	Field name, record identification and (data type)
1	Type of Patient (I-Indian; O-Non-Indian).
2	Type of Program (D-Direct; K-Contract).
	Provider/Location of encounter
3–4	Area Code (std. 2-digit numeric).
5–16	Dentist ID (Normally 9-digit numeric SSN, either with hypens or without. If no hyphens, must be left justified).
17–18	Service Unit Code (std. 2-digit numeric).
19–20	Facility Code (std. 2-digit numeric).
	Date of Visit
21–22	Year (numeric).
23–24	Month (numeric).
25–26	Day (numeric).
	Patient Identification
27–29	Age in years. This field or date of birth field required. (3-digit numeric).
	Birthdate/Sex
30–31	Year (numeric).
32–33	Month (numeric).
34–35	Day (numeric).
36	Sex (M-Male; F-Female).
	Social Security Number
37–39	Blank.
40–48	Social Security Number.
	Address
49–53	Zip Code-Optional (numeric).
54–57	Zip Extension-Optional (numeric).

Input Record Format for Processing Dental Services Data by the IHS Data Center at Albuquerque—Continued

Field position and size	Field name, record identification and (data type)
	Third Party Coverage
58	Medicaid (Y or blank) Optional.
59	Commerce (Y or blank) Optional.
60	Private (Y or blank) Optional.
	Total Charge for Visit
61–65	Dollar amount up to 5-digits (numeric).
66–67	Amount in cents (numeric).
	Service #1
68–71	ADA Procedure Code (from standard set of codes).
72–73	Units (numeric, 1 to 99).
74–78	Fee (dollar amount only, cents not allowed).
	Service #2
79–82	ADA Procedure Code.
83–84	Units.
85–89	Fee.
	Service #3
90–93	ADA Procedure Code.
94–95	Units.
96–100	Fee.
	Service #4
101–104	ADA Procedure Code.
105–106	Units.
107–111	Fee.
	Service #5
112–115	ADA Procedure Code.
116–117	Units.
118–122	Fee.
	Service #6
123–126	ADA Procedure Code.
127–128	Units.
129–133	Fee.
	Service #7
134–137	ADA Procedure Code.
138–139	Units.
140–144	Fee.
	Service #8
145–148	ADA Procedure Code.
149–150	Units.
151–155	Fee.
	Service #9
156–159	ADA Procedure Code.
160–161	Units.
162–166	Fee.
	Service #10
167–170	ADA Procedure Code.
171–172	Units.
173–177	Fee.
	Service #11
178–181	ADA Procedure Code.
182–183	Units.
184–188	Fee.
	Service #12
189–192	ADA Procedure Code.
193–194	Units.
195–199	Fee.
	Service #13
200–203	ADA Procedure Code.
204–205	Units.
206–210	Fee.
	Service #14
211–214	ADA Procedure Code.

Input Record Format for Processing Dental Services Data by the IHS Data Center at Albuquerque—Continued

Field position and size	Field name, record identification and (data type)
215–216	Units.
217–221	Fee.
	Service # 15
222–225	ADA Procedure Code.

Input Record Format for Processing Dental Services Data by the IHS Data Center at Albuquerque—Continued

Field position and size	Field name, record identification and (data type)
226–227	Units.
228–232	Fee.

If more than 15 ADA procedure codes are associated with a visit date, then a separate (second) input record must be created for processing purposes.

Figures F–1—F–3

Oral Examination Data Record Layout

Record Layout Oral Health Status Form (Dental Epidemiology) Record 30–2

EDCDIC RECORD SIZE 731, BLOCK SIZE 14620, BLOCK FACTOR 20

Field name	Size	Mode	Position
Record #	5	A/N	1
Routine User	1	N	2
Episodic User	1	N	3
Age	2	N	4–5
Sex	1	A	6
Tribe	Do not key any data		
Location Code	6	N	7–12
Dental Caries Index 4d–13d	4	A/N	13–52
Dental Caries Index 2–15	3	A/N	53–94
Dental Caries Index 18–31	3	A/N	95–136
Dental Caries Index 20d–29d	4	A/N	137–176
Treatment Needs Assessment			
L/arch 1	1	A–X	177
L/arch 2	1	A–X	178
L/arch 3	2	A/N	179–180
U/arch 1	1	A–X	181
U/arch 2	1	A–X	182
U/arch 3	2	A/N	183–184
Periodontal Status			
None	Do not key any data		
Type I	1	N	185
Type II	1	N	186
Type III	1	N	187
Type IV	1	N	188
Orthodontic Status			
None	1	A–X	189
Interceptive	1	A–X	190
Corrective	2	A/N	191–192
In Progress	1	A–X	193
Completed	1	A–X	194
Oral Pathology Status			
None	1	A–X	195
ANUG	1	A–X	196
Leukoplakia	1	A–X	197
Other	1	A–X	198
Open Entry			
ADA CODE	4	N	199–203
ADA CODE	4	N	204–207
ADA CODE	4	N	208–211
Treatment Required			
4d–29d*	10 each	A/N	212–411
1–32*	10 each	A/N	412–731

*Keys the tooth box number i.e. 4d then the data in the tooth box. Some boxes may have two sets of data i.e.

4		8
7c	or	6R
SM		5C

Figures F–4—F–5

G. Facility Data System

1. Reporting Requirements

a. The Facility Data System Instruction Manual provides complete instructions for reporting into the Facility Data System.

b. The Facility Data System (FDS) input form should be completed for each survey conducted during the month. Surveys are required on a 6 month, annual, or bi-annual basis depending on the type facility.

c. Each Area will define procedures for collecting the FDS data.

Options include:

(1) Manual form completion by a contractor.

(2) Key-entry of forms by a contractor.

(3) Key-entry of forms at the Area.

d. Records Forms will be consolidated at the Area level and forwarded to the

Division of Environmental Health at the end of each month.

2. Record Formats

a. The FDS uses one input form to update the master file. Each input form contains 80 characters.

b. The format of the FDS input form is shown in Figure G–1.

c. A sample of the FDS input form is included in Appendix A.

3. Transmission Media

a. The FDS forms for each Area are sent by the Wang word processor electronic mail to the Division of Environmental Health in Rockville, Md. at the end of each month. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

Facility Data System Input Form

Position	Field	Required
1–2	Area Code	X
3–4	Service Unit Code	X
5–8	Facility Code	X
9–10	Type Facility Code	X
11–40	Facility Name	X
41	Type Survey (1 or 2)	X
42–47	Date of Visit (MMDDYY)	X
48–51	Time Required for Visit and Report Writing.	X
	Left zero (eg. 0050)	X
52	Structure Grounds Factor (1,2,3,4,5).	X
53	Operational Factor (1,2,3,4,5).	X
54	Health Significance Factor (1,2,3,4,5).	X
55	Community Impact Factor (1,2,3,4,5).	X
56	Recall Factor (1,2,3,4,5)	X
57–58	Has Private Water System (01).	
59–60	Has Private Sewage Disposal System (02).	
61–62	Has Commercial Dishmachine (03).	
63–64	Three-Section Sink (04)	
65–66	Has Bulk Milk kDispenser (05).	
67–68	Unused (06)	
69–70	Unused (07)	
71–72	Joint Activity with Other Agency (08).	
73–75	Community/District Code	
76–78	Worker Number	X
79	Activation/Inactivation (0,1).	X
80	Input Code (A,C,D,N,S)	X

H. Environmental Health Reporting System (EHRS)

1. Reporting Requirement

a. The Environmental Health Reporting System (EHRS) Guidelines provide complete instructions for reporting into the Environmental Health Reporting System.

b. The Environmental Health Reporting System uses the Environmental Health Annual Activity Projection Form to record the need and the corresponding goal for services during the fiscal year. This form is completed annually. The Environmental Health Activity Reporting form is used to report field based services and to update the master file each month. This form, which enables the user to record a visitation to, or an activity related to, a classified premise to provide a service for a specific purpose, is completed daily. A sampling option will be developed.

c. Each Area will define procedures for collecting the EHRS data. Options include:

(1) Manual form completion by a contractor.

(2) Key-entry of forms by a contractor.

(3) Key-entry of forms by a keytape contractor.

d. Records will be consolidated at the Area level. If option 3 is used, the form will be forwarded to the keytape contractor by the 10th of the month following the collection of the data.

2. Record Formats

a. The formats of the EHRS input forms are shown in Figures H–1 through H–7.

b. A sample of each EHRS input form is included in Appendix A.

3. Transmission Media

a. The EHRS forms for each Area are sent to the keytape contractor who punches the data on a computer tape and mails the tape to the Division of Environmental Health in Rockville, MD at the end of each month. The Area Office and the contractor will need to determine how the EHRS forms will be transmitted from the contractor to the Area. Currently, a franked label with a return address is included with the forms.

Keytaping Instructions

Environmental Health Annual Acitivity Reporting Form

In each 150 character record, besides identifying information, there is room for eleven (11) thirteen (13) position activities. If there are less than eleven (11) activities entered on the form, the record is complete when the number present is keyed in. Release record at this point.

Note: If an Activity is partially completed (eg. some items have numbers and some are blank), zero fill the blanks.

Tape parameters: Non-labeled, LRECL=150, BLKSIZE=3750, EBCDIC, 6250BPI.

Field name	Record position	Special instructions	Required
Area	1–2	Numeric	All data elements.
S.U.	3–4	Numeric	
Reservation	5–7	Numeric	
1st Activity			
Premise	8–9	All 1st Activity fields numeric. If any data present, zero fill all blanks	
Service	10–11		
Purpose	12–14		
Need	15–17		
Goal	18–20		
2nd Activity			
Premise	21–22	All 2nd Activity fields numeric. If any data present, zero fill all blanks	
Service	23–24		
Purpose	25–27		
Need	28–30		

Field name	Record position	Special instructions	Required
Goal	31–33		
3rd Activity			
Premise	34–35	All 3rd Activity fields numeric. If any data present, zero fill all blanks.	
Service	36–37		
Purpose	38–40		
Need	41–43		
Goal	44–46		
4th Activity			
Premise	47–48	All 4th Activity fields numeric. If any data present, zero fill all blanks.	
Service	49–50		
Purpose	51–53		
Need	54–56		
Goal	57–59		
5th Activity			
Premise	60–61	All 5th Activity fields numeric. If any data present, zero fill all blanks.	
Service	62–63		
Purpose	64–66		
Need	67–69		
Goal	70–72		
6th Actvity			
Premise	73–74	All 6th Activity fields numeric. If any data present, zero fill all blanks.	
Service	75–76		
Purpose	77–79		
Need	80–82		
Goal	83–85		
7th Activity			
Premise	86–87	All 7th Activity fields numeric. If any data present, zero fill all blanks.	
Service	88–89		
Purpose	90–92		
Need	93–95		
Goal	96–98		
8th Activity			
Premise	99–100	All 8th Activity fields numeric. If any data present, zero fill all blanks.	
Service	101–102		
Purpose	103–105		
Need	106–108		
Goal	109–111		
9th Activity			
Premise	112–113	All 9th Activity fields numeric. If any data present, zero fill all blanks.	
Service	114–115		
Purpose	116–118		
Need	119–121		
Goal	122–124		
10th Activity			
Premise	125–126	All 10th Activity fields numeric. If any data present, zero fill all blanks.	
Service	127–128		
Purpose	129–131		
Need	132–134		
Goal	135–137		
11th Activity			
Premise	138–139	All 11th Activity fields numeric. If any data present, zero fill all blanks.	
Service	140–141		
Purpose	142–144		
Need	145–147		
Goal	148–150		

Keytaping Instructions

Environmental Health Annual Activity Reporting Form

In each 156 character record, besides identifying information, there is room for ten (10) thirteen (13) position activities. If there are less than ten (10) activities entered on the form, the record is complete when the number present is keyed in. Release record at this point.

Note: If an Activity is partially completed (e.g. some items have numbers and some are blank), zero fill the blanks.

Tape parameters: Non-labeled, LRECL=156, BLKSIZE=3900, EBCDIC, 6250BPI.

Field name	Record position	Special instructions	Required
Area	1–2	Numeric	All data elements.
S.U.	3–4	Numeric	
Reservation	5–7	Numeric	
Worker No.	8–10	Numeric	
Month/Year	11–13	Numeric	
1st Activity			
Premise	14–15	All 1st Activity fields numeric. If any data present, zero fill all blanks.	
Service	16–17		

Field name	Record position	Special instructions	Required
Purpose/Project No.	18–20		
Number	21–23		
Time	24–26		
2nd Activity			
Premise	27–28	All 2nd Activity fields numeric. If any data present, zero fill all blanks	
Service	29–30		
Purpose/Project No.	31–33		
Number	34–36		
Time	37–39		
3rd Activity			
Premise	40–41	All 3rd Activity fields numeric. If any data present, zero fill all blanks	
Service	42–43		
Purpose/Project No.	44–46		
Number	47–49		
Time	50–52		
4th Activity			
Premise	53–54	All 4th Activity fields numeric. If any data present, zero fill all blanks	
Service	55–56		
Purpose/Project No.	57–59		
Number	60–62		
Time	63–65		
5th Activity			
Premise	66–67	All 5th Activity fields numeric. If any data present, zero fill all blanks	
Service	68–69		
Purpose/Project No.	70–72		
Number	73–75		
Time	76–78		
Filler	79–91	Always blank	
6th Activity			
Premise	92–93	All 6th Activity fields numeric. If any data present, zero fill all blanks	
Service	94–95		
Purpose/Project No.	96–98		
Number	99–101		
Time	102–104		
7th Activity			
Premise	105–106	All 7th Activity fields numeric. If any data present, zero fill all blanks	
Service	107–108		
Purpose/Project No.	109–111		
Number	112–114		
Time	115–117		
8th Activity			
Premise	118–119	All 8th Activity fields numeric. If any data present, zero fill all blanks	
Service	120–121		
Purpose/Project No.	122–124		
Number	125–127		
Time	128–130		
9th Activity			
Premise	131–132	All 9th Activity fields numeric. If any data present, zero fill all blanks	
Service	133–134		
Purpose/Project No.	135–137		
Number	138–140		
Time	141–143		
10th Activity			
Premise	144–145	All 10th Activity fields numeric. If any data present, zero fill all blanks	
Service	146–147		
Purpose/Project No.	148–150		
Number	151–153		
Time	154–156		

I. Mental Health and Social Services Reporting System (MH & SS)

1. Reporting Requirements

a. The Mental Health and Social Services (MH/SS) Programs of the IHS have identified information needs in four areas: 1. Organizational/Administrative, 2. Human Resources/Manpower, 3. Patient Care, and 4. Staff Workload/Activities.

b. Reporting requirements for each of these areas include:

1. Organizational/Administrative. Data to be reported to IHS Headquarters/Area Office not currently defined.

2. Human Resources/Manpower. Annual compilation of descriptive data on program staff will be collected by Headquarters via telephone. Data by Program Component (Area/SU/Fac for IHS programs and Loc/Tribe/Community for contracted programs) includes: (a) Indian/non-Indian, (b) Sex, and (c) Discipline.

3. Patient Care. See data requirements for direct and contract outpatient and inpatient services. Direct patient care reporting should be on the appropriate clinical record system.

4. Staff Workload/Activities. Data requirements include: (a) Area/Service Unit/Facility; (b) Tribal Code (for Contractor ID only); (c) Provider Code; (d) Service Date (MMDDYY); (e) Service Location (Community); (f) Activity; (g) Recipient (contact classification); (h) Sub-Type (contact category); (i) Age; (j) Sex; (k) Primary Problem.

The Mental Health and Social Services record is used by MH/SS staff as a supplement to the clinical record to report program related activities. Some

Areas have instituted alternative systems for reporting activities. In such instances, the Area Office and the covered contractor will have to determine how these reporting requirements will be met.

2. Record Formats

a. The MH & SS record is to be used as an activities reporting document to record staff effort. Areas have the option of sampling this effort or reporting 100 percent. Each record is 64 characters in length.

b. The format of the MH & SS record is shown in Figures I–1 and I–2.

c. A sample of the MH & SS reporting form (two pages: HSA–125–1 and HSM–715–2), a problem codes list, and a record layout are included in Appendix A.

d. In the event of an Area using an alternative reporting system, the Area will provide definitions of reporting requirements, including specifics on record format, content definitions, coding conventions, etc.

3. Transmission Media

a. MH & SS records should be processed in the same fashion as APC records. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

Mental Health and Social Service Report

Master Mark Form 15 (HSA–125–1)
Positions 1–13
Mental Health & Social Service Report (HSM–715–2)
Positions 14–64

Position	Field	Required
1–2	Record Code (Always 15)	
3–4	Area Code (Use IHS Standard Codes)	X
5–6	Service Unit	X
7	Employee Status (IHS or Non-IHS)	
8	Program (Social Service or Mental Health)	X
9–10	Position Code	X
11–12	Month	X
13	Year	X
14	Project Number	
15–23	Patient Identification	X
	15–23 Social Security Number	
	18–23 Hospital Record Number	
24–26	Community of Residence or Project Location	X
27–29	Age	
	27-Code 2: Under 28 days	
	27-Code 5: 364 days	
	28–29: 1 year or older	
30	Sex	X
	Code 3: Male	
	Code 5: Female	
31	Contact Category	
	Code 1: Initial Contact	
	Code 4: Re-Contact	
	Code 6: Non-Contact (Register Update) (See instructions for use of register update)	
32–33	Contact Classification	X
	32-Code 0: IHS Inpatient	
	32-Code 4: Contract Inpatient	
	32-Code 7: Field	
	33-Code 0: IHS Outpatient	
	33-Code 4 Contract Outpatient	
	33-Code 7: Other	
34–35	Case Register	
	34-Codes 0–9: Case Register Number	
	34-Code 2: Delete from Register	
36–39	Diagnosis-ICDA Code (For designated Consultant Only)—Area Option	
40–41	Primary Problem Code (Listed on back of reporting form) Sample attached	X
42–43	Secondary Problem Code	
44–52	Primary Purpose of Contact (Mark one)	
	44-Code 4: Community Development	
	45-Code 0: Individual Therapy	
	45-Code 4: Consultation	
	46-Code 0: Family Therapy	
	46-Code 4: Cooperative Effort	
	47-Code 0: Group Therapy	
	47-Code 4: Education	
	48-Code 0: Psych. Testing	
	48-Code 4: Grantsmanship	
	49-Code 4: Prevention	
	50-Code 4: Referral	
	51-Code 4: Surveys/Research	
	52-Code 4: Other	

Position	Field	Required
53–64	Primary Assisting Resource (Mark one) 53-Code 0: Contract Resource 53-Code 5: IHS 54-Code 0: Health Department 54-Code 5: BIA 55-Code 0: Native Practitioner 55-Code 5: Title 18 56-Code 0: Private Insurance 56-Code 5: Title 19 57-Code 0: Social Security 57-Code 5: Grants 58-Code 0: State/County 58-Code 5: Housing 59-Code 0: State Institution 59-Code 5: OEO 60-Code 0: Tribal Organization 60-Code 5: Education 61-Code 0: Veterans Administration 61-Code 5: Employment 62-Code 0: Vocational Rehabilitation 62-Code 5: None 63-Code 0: Voluntary/Private 63-Code 5: Other 64-Code 0: Welfare Department	

Figures I–1—I–2

J. Alcoholism Treatment Guidance System (ATGS)/Chemical Dependency Management Information System (CDMIS)

1. Reporting Requirement for ATGS

a. An Alcoholism Treatment Guidance System (ATGS) record is required for each person treated in an IHS alcoholism and substance abuse treatment program (including covered contractors). Patients are usually present at the time of a service, but services such as multi-disciplinary staffing and family counseling without the client present are also documented. In addition to completing the computer form, the provider must also note services in the progress notes maintained in the treatment chart. Certified chemical dependency counselors, counselors-in-training, and other providers qualified by the program director may enter information in the client record. In addition to treatment services, prevention services and other staff activities are reported through ATGS.

b. The ATGS Counselor's Resource Manual, October 1983, provides complete definitions and procedures for reporting in the ATGS system and client chart.

2. Record Formats for ATGS

a. The formats of the ATGS records are shown in Figures J–1 through J–9.

b. Samples of ATGS forms are included in Appendix A.

3. Transmission Media for ATGS

a. Computer forms are sent by the alcoholism and substance abuse programs to the appropriate IHS Area Office by the 6th day of the month. Forms are then batched and mailed to the key taping contractor, UNICOR, on or before the 10th of each month. UNICOR key tapes the data and forwards a tape to the IHS Division of Data Processing Services (DDPS) in Albuquerque, New Mexico. DDPS produces reports from the tapes and provides two copies to each IHS Area Office, who in turn distributes one copy to each program that provided data.

4. New System Under Development

Current plans call for a gradual phasing out of the ATGS in favor of the new Chemical Dependency Management Information System (CDMIS) during the next two fiscal years. The CDMIS is currently under development with one beta test site now and several more beta test sites to be added in June and July of 1989. General implementation is to begin in October 1989, after final adjustments have been made to the system, with those who have the equipment and capability to change to CDMIS. Once on CDMIS, a program will discontinue ATGS. There will be two parallel systems operating during the CDMIS implementation period.

The ATGS Revision Committee (now called the CDMIS Committee) has examined every item of the ATGS and CDMIS asking what is the minimum information required by both the Director, IHS, and Congress. Only those items that are being demanded on a regular basis or are required in law have been included in CDMIS.

5. Reporting Requirement for CDMIS

a. The Chemical Dependency Management Information System consists of two forms. CDMIS–1 is patient-specific and is completed on initial entry into the program. CDMIS–2 is an annual staffing report. Certified chemical dependency counselors, counselors-in-training, and other providers certified as qualified by the program director are to complete these forms.

b. The CDMIS Counselor's Resource Manual, June 1989, and the CDMIS Data Entry Manual, June 1989, provide complete definitions and procedures for reporting on the CDMIS.

c. The required information (CDMIS–1 and 2) will be reported through the Generic Activities Reporting System when completed. A sampling option will be developed.

6. Record Formats

a. The formats of the CDMIS records are currently under development and should be ready by the fall of 1989.

b. Samples of draft CDMIS forms are included in Appendix A. All forms will be finalized by October 1, 1989.

7. Transmission Media

a. This section is currently under development with a targeted completion date of summer, 1989.

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Short Term No: A]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric '00'
Program ID	3–8	Numeric
1. Case Number	9–17	9–11 alphanumeric, 12–17 numeric
2. Sex	18	"1" if M, "2" if F
3. Ethnicity	19–21	Enter '1' if Indian, '2' if Alaskan, '3' if other, right blank fill unused positions.
4. Tribe code	22–24	Blank of numeric
5. Employed	25	"1" if Y, "2" if no
6. Dependents	26	"1" if Y, "2" if no, or blank
Number of	27–28	Blank or left-zero filled numeric
7. Child care	29	"1" if Y, "2" if no, or blank
8. ALC/Drug Treatment	30	"1" if Y, "2" if no, or blank
9. Component codes	31–32	Blank or numeric
	33–34	Blank or numeric
	35–36	Blank or numeric
10A. Admit/discharge	37–38	Blank or enter numbers circled
Total days	39–40	Blank or left-zero filled numeric
2nd line of 10A	41–44	—see instructions from record pos. 37–40
3rd line of 10A	45–48	—see instructions from record pos. 37–40
10B. Service code	49–50	Blank of numeric
Total hours	51–52	Blank or left-zero filled numeric
2nd line of 10B	53–56	—see instructions for record pos. 49–52
3rd line of 10B	57–60	—see instructions for record pos. 49–52
11. Referral codes	61–72	Blank and/or numeric, enter 2-digit codes left to right, right blank fill any unused positions.
12. Primary problem	73–74	Numeric
State funds code	75–76	Blank or numeric
13. New/reopen program	77	Enter "1" or "2" for box checked
New/reopen ATGS	78	Enter "1" or "2" for box checked or blank
14. Discharge	79	Enter number of box checked (1–5) or blank
15 & 16		Do not keytape
17. State ID Number	80–88	Blank or alphanumeric
18. Service month	89–90	Numeric, left zero filled
Service year	91–92	Numeric, left zero filled

Figure J–1

ATGS KEYTAPING INSTRUCTIONS

[Form name: Initial Contact No: 1]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric '01'
Program ID	3–8	Numeric
Component code	9–10	Numeric
Case number	11–19	11–13 alphanumeric, 14–19 numeric
Staff code	20–21	Blank or numeric
County code	22–24	Blank or numeric
Primary problem	25–26	Numeric
Secondary problem	27–28	Blank or numeric
State funds code	29–30	Blank or numeric
State client ID	31–39	Blank or alphanumeric
Optional code C	40–41	Blank or numeric
Optional code D	42–43	Blank or numeric
1. Sex	44	"1" if M, "2" if F
2. Referred to program	45–46	Numeric
3. Court referral	47–48	Blank or numeric
4. Ethnicity	49–54	Enter number corresponding to box checked, right-blank fill unused fields, (i.e., if boxes 1 & 3 checked enter '13')
5. Tribe code	55–57	Blank or numeric
Degree of blood	58	Blank or numeric
6. IHS eligible	59	"1" if Yes, "2" if No, "3" If none available
7. Marital	60	Enter number of first box checked
8. Employed	61	"1" if Yes, "2" if No
Occupation	62–63	Blank or numeric
Income	64–68	Blank or numeric or zeros
9. Education	69–70	Enter number circled, left-zero filled
Other	71–72	Blank or numeric
10. Skill development	73	"1" if Yes, "2" if No
11. Health insurance	74	"1" if Yes, "2" if No
Medicare	75	"1" if Yes, "2" if No
Medicaid	76	"1" if Yes, "2" if No
12. Veteran	77	"1" if Yes, "2" if No

ATGS KEYTAPING INSTRUCTIONS—Continued

[Form name: Initial Contact No: 1]

Field name	Record position	Location on documents or special instructions
13. Years drinking/drug	78–79	Left zero-filled numeric
Years heavy use	80–81	Blank or left zero-filled numeric
Previous treatment	82	"1" if Yes, "2" if No
Prior treatment-IHS	83	Blank or "1" if Yes, "2" if No, "3" if unknown
14. Dependents	84	"1" if Yes, "2" if No
How many	85–86	Blank or numeric
15. Been hospitalized	87	"1" if Yes, "2" if No
Alcohol related	88	"1" if Yes, "2" if No, or blank
Arrested	89	"1" if Yes, "2" if No
DWI	90	"1" if Yes, "2" if No, or blank
Used alcohol	91	"1" if Yes, "2" if No
Number of days	92–93	Blank or left-zero filled numeric
Used other drugs	94	"1" if Yes, "2" if No
Number of days	95–96	Blank or left-zero filled numeric
Type of drugs code	97–98	Blank or numeric
16. Alcohol stage	99	Blank or numeric
Physical stage	100	Blank or numeric
Emotional stage	101	Blank or numeric
Cultural stage	102	Blank or numeric
Spiritual stage	103	Blank or numeric
Recommended:	104	Blank or enter number of first box checked
Difference code	105–106	Blank or numeric
17. Actual placement	107	Enter number of first box checked (1–7)
Placement type	108	Blank or enter letter of box (A–F)
18. Referral made	109	Blank or "1" if Yes, "2" if No
Referral code	110–111	Blank or numeric
Referral code	112–113	Blank or numeric
19. Spiritual preference	114–115	Blank or numeric
Spiritual preference	116–117	Blank or numeric
Practice	118	"1" if regular, "2" if occasional, "3" if never, or blank
Original contact date	119–124	Blank or numeric (MMDDYY format). As required, left-zero fill any 2-digit field.
Date form completed	125–130	Numeric (MMDDYY format). As required, left-zero fill any 2-digit field.

Figures J–2—J–3

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Discharge Report No: 7]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric '07'
Program ID	3–8	Numeric
Component code	9–10	Numeric
Case Number	11–19	11–13 Alphanumeric, 14–19 Numeric
Staff code	20–21	Blank or numeric
County code	22–24	Blank or numeric
Primary problem	25–26	Numeric
State funds code	27–28	Blank or Numeric
State client ID	29–37	Blank or Alphanumeric
Optional code C	38–39	Blank or numeric
Optional code D	40–41	Blank or numeric
1. Date of admission	42–47	Numeric (MMDDYY Format) Left-zero filled each 2-digit field if necessary
2. Date of discharge	48–53	see instructions for 42–47
3. Discharge from	54	Enter letter of box checked (A–M)
4. Services used	55–60	Enter first 6 letters left to right, right-blank fill any remaining positions
5. Discharge reason	61	Enter letter of first box checked
6. Client goals status	62	Enter number of box checked
7. Admission stages	63–67	Blanks or enter column of numbers under admission
Discharge stages	68–72	Blanks or enter column of numbers under discharge
8. Using what	73	Enter "1" if alcohol circled, "2" for drug, "3" for substances, "4" if more than one item circled
Using ALC/DRG/SUB	74	"1" if Yes, "2" if No, "3" if unknown
9. Discharge plan Negot.	75	"1" if Yes, "2" if No, or blank
10. Discharge to:	76	Enter letter checked in CR* column
	77	Enter letter checked in CD* column
Date form completed	78–83	Blank or Numeric (MMDDYY format) as required, left zero-fill each 2-digit field

Figure J–4

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Follow-up Status No: 8]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric '08'.
Program ID	3–8	Numeric.
Component code	9–10	Blank or numeric.
Case Number	11–19	11–13 Alphanumeric, 14–19 numeric.
Staff code	20–21	Blank or numeric.
County code	22–24	Blank or numeric.
Primary problem	25–26	Numeric.
State funds	27–28	Blank or numeric.
State client ID	29–37	Blank or alphanumeric.
Optional code C	38–39	Blank or numeric.
Optional code D	40–41	Blank or numeric.
1. Type Status report	42	Enter number of box checked.
2. Moved/died	43	Blank or numeric.
	.....	If question 2 is checked, skip rest of record and enter date on bottom of form (record position 75–80).
3. Client status	44	Enter letter of box checked.
4. Client stage	45–49	Blank or numeric.
5. Employed	50	"1" if Yes, "2" if No.
Occupation	51–52	Blank or numeric.
Income	53–57	Blank or left-zero filled numeric.
6. Skill dev./trng	58	"1" if Yes, "2" if No.
7. Marital	59	Enter number of box checked.
8. Hospitalized	60	"1" if Yes, "2" if No.
Alcohol related	61	"1" if Yes, "2" if No, or blank.
Arrested	62	"1" if Yes, "2" if No.
DWI	63	"1" if Yes, "2" if No, or blank.
Used alcohol	64	"1" if Yes, "2" if No.
Number days	65–66	Blank or left-zero filled numeric.
Used other drugs	67	"1" if Yes, "2" if No.
Number days	68–69	Blank or left-zero filled numeric.
Type code	70–71	Blank or numeric.
9. Days last drink	72–74	Blank or left-zero filled numeric or "NA".
Date form completed	75–80	Numeric (MMDDYY format). Left-zero fill each two-digit field if necessary.

Figure J–5

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Services Report No: 9]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric '09'.
Month	3–4	Left-zero filled numeric.
Year	5–6	Left-zero filled numeric.
Program ID	7–12	Numeric.
Component code	13–14	Numeric.
Case number	15–23	15–17 alphanumeric, 18–23 numeric.
Staff code	24–25	Blank or numeric.
County code	26–28	Blank or numeric.
Primary problem	29–30	Numeric.
State funds code	31–32	Blank or numeric.
State client ID	33–41	Blank or alphanumeric.
Optional code C	42–43	Blank or numeric.
Optional code D	44–45	Blank or numeric.
1. Day of month	46–47	Blank or left-zero filled numeric.
Component month	48–49	Blank or numeric.
Staff code	50–51	Blank or alphanumeric.
Service code	52–53	Blank or numeric.
Total hours	54–56	54–55 left-zero filled numeric, no decimal point.
	.....	56 numeric, zero-fill tenth's position if only whole number entered.
14 additional lines of data, same format as positions 46–56	57–210	Enter each 11-digit field disregarding any imbedded blank line, right-blank fill unused fields.
2. Treatment plan neg	211	"1" if Yes, "2" if No, or blank.
Treatment plan prog	212	"1" if Yes, "2" if No, or blank.
3. Arrive at agency	213	"1" if Yes, "2" if No, or blank.
Accepted for service	214	"1" if Yes, "2" if No, or blank.
4. IHS-new/reopen/cont	215	"1, 2 or 3" for new, reopen or continue respectively or blank.
Prog-new/reopen/cont	216	"1, 2 or 3" for new, reopen or continue respectively or blank.
Comp.-new/reopen/cont	217	"1, 2 or 3" for new, reopen or continue respectively or blank.

5. Referrals out	218–223	Blank and/or numeric, enter 2-digit codes left to right, right blank fill any unused positions.
6. Status	224–226	Enter numbers circled or blank.
Component code	227–228	Blank or numeric.
Total days	229–230	Blank or left-zero filled numeric.
4 additional lines of data, same format as positions 224–230	231–258	Enter each 9-digit field disregarding any imbedded blank line, right-blank fill unused fields.
Data form completed	259–264	Blank or numeric (MMDDYY format) as required, left-zero fill any 2-digit field

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Services Report No: 9A]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Characters 'OA' (numeric 0).
Page	3	Numeric.
Month	4–5	Left-zero filled numeric.
Year	6–7	Left-zero filled numeric.
Program ID	8–13	Numeric.
Component code	14–15	Numeric.
Case number	16–24	16–18 alphanumeric, 19–24 numeric.
Staff code	25–26	Blank or numeric.
County code	27–29	Blank or numeric.
Primary problem	30–31	Numeric.
State funds code	32–33	Blank or numeric.
State client code	34–42	Blank or alphanumeric.
Optional code C	43–44	Blank or numeric.
Optional code D	45–46	Blank or numeric.
1. Day of month	47–48	Left-zero filled numeric.
Component code	49–50	Numeric.
Staff code	51–52	Blank or alphanumeric.
Service code	53–54	Numeric.
Total hours	55–57	55–56 left-zero filled numeric, no decimal point.
		57 numeric, zero-fill tenths position if only whole number entered.
38 additional lines of data, same format as positions 47–57	58–475	Enter each 11-digit field disregarding any imbedded blank line, right-blank fill unused fields.

Figure J–7

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Activity Report No: 10]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric 10.
Month	3–4	Left-zero filled numeric.
Year	5–6	Left-zero filled numeric.
Program ID	7–12	Numeric.
Component code	13–14	Numeric.
Staff code	15–16	Numeric.
Staff type	17	"1, 2, 3 or 4" for reg., CHR, volun., or CETA respectively.
Direct service staff	18	"1" if Yes, "2" if No.
		Under prevention and community education: (all rows except bottom one).
Type session	19–21	Left-zero filled numeric.
Target group	22–23	Numeric.
Number of people	24–27	Left-zero filled numeric.
21 additional lines of data, same format as positions 19–27	28–216	Enter each 9-digit field disregarding any blank lines, right-blank fill unused fields.
		Total Row:
Conference and workshops	217–219	For all remaining fields, blank or left-zero.
Inservice training	220–222	Filled numeric, no decimal points.
Staff meetings	223–225	All total fields are three digits except those noted below:
Leave	226–228	
Supervision of staff	229–231	
Report to tribal council	232–234	
ATGS	235–237	
Planning and development	238–240	
General administration	241–243	
Inpatient direct hours	244–246	
Outpatient direct hours	247–249	
Prevention—individuals	250–252	
Travel direct—client	253–255	
Travel indirect	256–258	
Other	259–261	
Information inquiries	262–264	
Contacts for info	265–268	4 digit field.
Session code	269–271	Blank.

ATGS KEYTAPING INSTRUCTIONS—Continued

[Form Name: Activity Report No: 10]

Field name	Record position	Location on documents or special instructions
Target group	272–273	Blank—2 digit field.
Persons in group	274–277	4 digit field.
Hours preparation	278–280	
Hours presentation	281–283	
Total hours	284–286	

Figure J–8

ATGS KEYTAPING INSTRUCTIONS

[Form Name: Activity Report—Continuation No: 10A]

Field name	Record position	Location on documents or special instructions
Record type	1–2	Numeric '11'
	3–286	This record is identical to form No. 10 except the record type code.

Figure J–9

K. Community Health Representation Information System (CHRIS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Community Health Representative (CHR) Activities Report form for each CHR service that was provided on the day to which the form applies. Continuation CHR Activities forms (containing all header information as well as CHR activity line entries) are to be completed if all CHR services provided on a reporting day can not all be reported on a single CHR Activities form. CHR Activities forms are to be completed during one sample week (a 7 day week) per month in accordance with the CHR sample reporting week schedule to be specified by the IHS Headquarters Director of the CHR Program.

b. The CHR Activities Report User Manual provides complete definitions and procedures for reporting into the Community Health Representative Information System (CHRIS).

c. Each CHR Program, in cooperation with their respective IHS Area Office CHR Coordinator, will determine procedures for collecting CHR Activities data and creating automated records in the format described in the next section. Options include:

(1) Key-entry of forms at the CHR Program

(2) Key-entry of forms at the Area

(3) Key-entry of forms by a contractor

(4) Key-entry of forms at the service unit

d. Records will be consolidated at the Area level and forwarded to the Division of Data Processing Services (DDPS) at Albuquerque no later than two weeks after the last day of each sample reporting week.

e. The contractor will be required to submit on a quarterly basis a report to the Area Office which analyzes the differences between projected and actual services, and explains major differences.

2. Record Formats

a. The CHR Activities record contains individual patient encounter and/or group encounter information. Each record is proposed as 39 characters in length. These specifications may be slightly modified after systems design work is completed.

b. The proposed format of the CHR Activities record is shown in Figures K–1 through K-3.

c. A draft CHR Activities Report form is included in Appendix A.

3. Transmission Media

a. CHR Activities records for each Area are generally mailed to DDPS on nine track unlabeled, unblocked EDCDIC tape. The Area Office and the contractor will need to determine how the data will be transmitted from the contractor to the Area.

4. RPMS CHR Data Entry System

a. There is available an RPMS ANSI MUMPS CHR data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

CHR Activities Record

[Note: All fields are required reporting fields]

Position and Field

A. Header Information

1–4 Provider:
(Last 4 digits of each CHR's Social Security Number unless otherwise instructed by the CHR's supervisor. If more than one CHR in the same CHR program have the same last four Social Security Number digits, a different 4-digit number may be given by the CHR supervisor to use.)
5–11 Program:
5–6 Area Code
7–8 Service Unit Code
9–11 Tribe/Community Code
12–17 Date:
12–13 Month (01–12)
14–15 Day (01–31)
16–17 Year (last 2 digits of year)
18–19 Page:
18 Specific Report Page
19 Total Reporting Pages for that day ("Page _____ of _____" is used to distinguish between forms when one CHR provides more services than can be reported on one reporting form.)

B. Service Data

Note: One line is used for each service provided on the day to which the form applies. If more services are performed on one day than can be reported on one CHR Activities form, an additional form(s) should be used and number as described above. All spaces should be filled in with information. If an item does not apply to a particular service, enter a dash "—", not a zero. For additional reporting instructions consult the CHR Activities Report User Manual.
20–21 Service Code:
1 Provide Health Education Services
2 Case Find; Screen
3 Case Management—Coordinate
4 Monitor Patient
5 Provide Emergency Patient Care

6 Provide Non-Emergency Patient Care
7 Provide Homemaker Services
8 Transport; Deliver
9 Interpret; Translate
10 Provide Environmental Services
11 Administrative Reporting and Record Keeping
12 Provide Patient Clerical Services
13 Attend Meetings
14 Obtain Training
15 Other Administrative Services
16 Other Services

22–23 Health Area:
1 Diabetes
2 Cancer
3 Hypertension
4 AIDS
5 Communicable Disease
6 Substance Abuse
7 Community Injury Control
8 Health Promotion/Disease Prevention
91 Other General Medical
92 Dental
93 Gerontological
94 Maternal/Child Health
95 Mental Health
96 Environmental
— Not Applicable

24 Setting:
1 Home
2 Hospital/Clinic
3 CHR Office
4 Community

25–26 Age:
Two digits for age. If the recipient is less than 1 year of age use a zero, "0." If no personal service is given or a group is served, enter a dash, "—".

27 Sex:
1 Male
2 Female
Where service for both males and females is provided or no direct client service is involved, enter a dash, "—."

28–30 Number Served:
When a group service is provided, the number of participants receiving direct service is to be recorded here. If there is only one main client, enter a "1". A breast feeding class is an example of services provided for more than one person. If an infant is the main client, the number served is "1" even though the mother is instructed in infant care. Record the number of people served here. Enter a dash "—" in the box for a service in which people are not provided for directly, e.g., CHR administrative service.

30–31 Referral From
32–30 Referral To

Referral Codes

— None
1 Medical
2 Nursing
3 Dental
4 Eye
5 Social Worker
6 Substance Abuse Professional
7 Other Professional
8 Technician
9 Agency/Program
10 Family/Self/Community

34–36 Minutes Used—Service
37–39 Minutes Used—Travel

Figures K–1—K–3

L. Community Health Activity Reporting System

1. Reporting Requirement

a. A Community Health Activity record is required for all activities performed by each Public Health Nurse (PHN). These are to include both direct and indirect patient care contacts and all administrative and training activities. A CHA record must be completed on each discrete activity according to the time required for the activity. Each daily activity sheet should include records to account for the total time during the day that the PHN was on duty.

b. All reporting requirements and procedures are outlined in the CHA Reporting System Guide.

c. Each Area will define procedures for getting the data from each reporting site. All data from each Area will be sent at least quarterly to the designated UNICORP data entry point.

d. A sampling option will be developed.

2. Record Formats

a. The CHA record contains data on each discrete activity performed by a Public Health Nurse. Each record is 82 characters in length.

b. The format of the CHA record is shown in Figure L–1.

c. A sample of the IHS CHA form is included in Appendix A.

3. Transmission Media

a. The CHA records are mailed to DDPS by UNICORP on nine track unlabeled, unblocked EBCDIC tape.

4. CHA Data Entry System

a. Currently all data is entered onto a data entry sheet. These are consolidated at the Area level and transmitted to UNICORP for data entry.

b. A MUMPS based Generic Activities Reporting System is being developed which will allow service units, contractors and/or Area Offices to do their own data entry and transmit the data via 9 track disks or data cartridges to the data center.

COMMUNITY HEALTH ACTIVITY RECORD FORMAT

Position	Field	Required
1–2	Record Code (Always "14")	
3–8	Area/Service Unit/Facility Code	X
9–10	Position Code	X
11–16	Date (MMDDYY)	X
17–19	Community	X
20–21	Activity	X
22–24	Primary Purpose Code	X
25	First Visit	
26	Nursing Diagnosis	
27–29	Secondary Purpose Code	
30	First Visit	
31	Nursing Diagnosis	
32	Time for Activity (Hour(s))	X
33–34	Time for Activity (Minutes)	X
35–37	Number Counseled in Clinic/Number Contacted in Group Session	
38–43	Health Record Number (Required for patient contacts)	
44–45	Date of Birth (Month)	X
46–47	Date of Birth (Day)	X
48–49	Date of Birth (Year)	X
50	Sex	X
51	Family Status	X
52	Travel Time (Hour(s))	
53–54	Travel Time (Minutes)	
55–56	Total Time (Hours)	
57–58	Total Time (Minutes)	
59–60	Leave Taken (Annual—Hours)	
61–62	Leave Taken (Annual—Minutes)	

COMMUNITY HEALTH ACTIVITY RECORD FORMAT—Continued

Position	Field	Required
63–64	Leave Taken (Sick—Hours)	
65–66	Leave Taken (Sick—Minutes)	
67–68	Leave Taken (Compensatory—Hours)	
69–70	Leave Taken (Compensatory—Minutes)	
71–72	Leave Taken (Station—Hours)	
73–74	Leave Taken (Station—Minutes)	
75–76	Leave Taken (Other—Hours)	
77–78	Leave Taken (Other—Minutes)	
79–80	Overtime Worked—Hours	
81–82	Overtime Worked—Minutes	
83–91	Social Security Number (Required for patient contacts)	X

Figure L–1

M. Health Education Resources Management System (H.E.R.M.S.)

1. Reporting Requirements

a. The Indian Health Service Education Program developed a new data system—the Health Education Resources Management System (H.E.R.M.S.) over two and a half years ago. This system has undergone several field tests during the past two years and all data during these tests have been operated manually by the field health education staff.

The H.E.R.M.S. includes a daily record encounter and this record system is required for service unit health education staff. This includes covered contractors.

b. H.E.R.M.S. reporting forms are due in the Area Health Education Office not later than the seventh working day after the end of the month of the reported workload.

c. Part 3, Chapter 12 of the Indian Health Service Manual (Health Education) is currently being revised and will require the H.E.R.M.S.

d. A sampling option will be developed.

2. Record Format

a. The format of the H.E.R.M.S. form is shown in Figures M–1 through M–5.

b. A sample of the IHS H.E.R.M.S. form is included in Appendix A.

3. Reports

The following reports will be generated quarterly with an annual summary from the Health Education Resources Management System (H.E.R.M.S.) to be provided to Headquarters, Areas, and service unit/tribal health education personnel as required.

Reports To Be Provided:

Report I: Quarterly Report Summary of Health Education Activities
Report II: Bi-Annual Summary Report of Activities
Report III: Annual Summary Report of Activities
Report IV: Cost of Activities by Provider
Report V: Area Specific Request by Area Consultant

4. RPMS MUMPS Data Entry System (i.e., GENERIC Reporting System)

The H.E.R.M.S. is compatible with development of the Indian Health Service "generic" activities reporting system, and will provide the necessary testing of the Health Education Resources Management System and its application to the "generic" system.

5. Additional Benefits

This new data system will enable the IHS and tribal programs to have the ability to collect and generate statistical reporting systems to address the efficiency and effectiveness of health education services, RAM issues relevant to staff productivity and cost benefit, reporting for Area and Headquarters requirements, and justification and tracking system for staffing, and etc. Improved control, communication, coordination, and up-to-date reporting for categorical activities for the Chief, Health Education Branch, and Chief, Health Education Section, Indian Health Service, is also anticipated.

6. H.E.R.M.S. Manual

A complete instruction manual for the H.E.R.M.S. is available from the Area Health Education Office.

H.E.R.M.S. RECORD REPORTING INSTRUCTIONS

Position	Field	Required
To be determined.	Ia. Area Coding is to be numbered according to the IHS Standard Code Book	X
	Ib. Service Unit/Tribal Program Coding is to be numbered according to the IHS Standard Code Book	X
	Ic. Provider No.: This number is assigned by the Area Branch Chief	X
	Id. Facility No.: Assigned in IHS Standard Code Book. Facility is where the Health Education staff member completes H.E.R.M.S. forms	X
	Ie. Month: Enter the Month that reports are being submitted for workload activities. 01–12	X
	If. Fiscal Year: Enter the last two digits of the fiscal year	X
	Ig. Page: Enter the number of forms submitted for the reporting period, example: page 1 of 3 pages, page 2 of 3, page 3 of 3	X
	Box I Date: List each day's date	X
	Box II Task Matrix: The purpose of this column is to identify those direct services which are provided in the course of health education activities. The following tasks are to be utilized in the task matrix categories: 100 series, Identification of Health Problems and Needs; 200 series, Design Educational Objectives and Develop Methodology; 300 series, Implementation/Teaching; 400 series, Health Education Program Evaluation; 500 series, Support Services; and 600 series, Professional Training. Use one line per task.	X
	Box III Health Education Program Codes: See back side of form—Box III	X
	Box IV Number of People Served: List the number of individuals reached in the appropriate box	

H.E.R.M.S. RECORD REPORTING INSTRUCTIONS—Continued

Position	Field	Required
	Box V Age Categories: Only list for "300" activities	X
	Box V is to be used to indicate the age categories of individuals reached during "direct 300 level" health education activities	
	Select one age category that best represents the majority of the group	
	1=0–2 Infant	
	2=3–5 Pre-school	
	3=6–13 Elementary	
	4=14–18 High School	
	5=19–25 College/Young Adult	
	6=26–55 Adult	
	7=56+ Sr. Citizen	
	8=All Ages, mixed	
	Box VI Total Number of People Reached	X
	Box VII Task/Activity Hours: Box 7 is to be used to code the number of service hours required for accomplishing the health education activity or task.	X
	Must be marked for each activity. Mark, to the nearest half hour, the time spent in carrying out the task. Example: an activity taking seven hours and 35 minutes, code as 07.5; five hours and 12 minutes code as 05.0.	
	Box VIII Travel Time: Travel will be handled as an activity and therefore this box will be eliminated	
	Time is heavily influenced by such variables as distance, climate, number of Indian communities, etc.	
	Box 8 is to be used when travel is required to carry out a health education activity	
	Includes the physical act of moving between ones usual work site (office) to other locations where client/patient services are to be rendered or performed. Include travel time for follow-up, evaluation, data collections. Mark to the nearest half hour. Example: travel time of 2 and 1/2 hours would be coded as 02.5.	
	Box IX Location: Box 9 is to be used to identify the specific location of the program and educational activity. Utilize the following location codes to identify the specific location. Use a location code for each task.	X
	Location Codes (i.e., settings where services are being provided)	
	901 Home	
	902 School	
	903 Clinic	
	904 Hospital	
	905 Tribal/Comm Bldg*	
	906 Tribal Worksite	
	907 Recreational Facility	
	908 Street/Highway (Roadside)	
	909 Health Education Office	
	910 Other	
	*(*905*–i.e., Services Center, Facility Building, Chapter House, Church, etc.)	
	Box X Community Code: The health educator is to identify the specific community where the service or activity was provided. See the IHS Standard Code Book for the specific community code. Available from the Health Education Area Office. (See Appendix A–111 for sample, pg 12.)	X

Figures M–1—M–3

H.E.R.M.S. RECORD TASK MATRIX

Code	Task
101	Needs Assessment
102	Data Collection
103	Analyze Data
104	Summarize Data
201	Educational Diagnosis
202	Information Gathering/Obtaining Resources
203	Develop Program Objectives
204	Establish Approach & Sequence of Events
205	Materials Development & Design
206	Publicizing & Promoting
301	Staff In-Service Training
302	Presentation & Discussion
303	Staff Support w/Education Activities
304	Patient Education
401	Process Evaluation
402	Evaluation of Knowledge, Attitudes and Beliefs
403	Outcome Evaluation
404	Quality Assurance
405	Reports
406	Debriefing
501	General Progam Admin.
502	Special Admin. Assignment (within Health Education)
503	Special Admin. Assignment (outside Health Education)
504	Staff Meetings

H.E.R.M.S. RECORD TASK MATRIX—Continued

Code	Task
505	Maintenance of Resource Center/Audiovisual Library
506	Clerical Tasks
601	Professional Training
602	Self-Development Travel

Figures M–4—M–5

N. Nutrition and Dietetics Program Activities Reporting System (NDPARS)

1. Reporting Requirement

a. A one line entry is required to be completed on a Nutrition and Dietetics Program Activity Reporting System (NDPARS) form for each nutrition/dietetics activity. NDPARS forms are to be completed daily. A sampling option will be tested in FY 1990.

b. The NDPARS Users Manual provides complete definitions and procedures for completing the forms.

c. Each nutrition/dietetic's staff member completes the forms and sends the forms to the Area Nutrition/Dietetics Branch Chief monthly. The Area sends the forms to Headquarters for entry into the computer.

2. Record Format

a. The NDPARS record contains individual patient encounters and/or group encounter information. Additionally, the record contains program management, technical assistance, and training information.

b. The format of the NDPARS record is shown in Figures N–1 through N–4.

c. A NDPARS form is included in Appendix A.

3. Transmission Media

NDPARS records are mailed to Area Office and then Headquarters for data entry.

4. RPMS NDPARS Data Entry System

There is available an RPMS ANSI MUMPS NDPARS data entry program which allows for records to be keyed locally, transmitted to the Area, and forwarded from the Area to DDPS by telecommunications.

NDPARS RECORD

Position	Field	Required
This is a Fileman global and no export and merge programs are available at this time.	Header Information:	
	Name	X
	Service Unit	X
	Date	X
	Service Data:	
	NOTE: One line is used for each service provided. All spaces should be filled in with codes. For additional reporting instruction consult the NDPARS User Manual.	
	Function Code	X
	01 Clinical Nutrition Services	
	02 Hospital Foodservice Systems Management	
	03 Community Nutrition Program Management	
	04 Routine Nutritional Care	
	05 Nutrition Education Service	
	06 N&D Program Coordination, Consultation & Technical Assistance	
	07 N&D Program Administration	
	08 Continuing Education	
	09 Continuing Training	
	10 Conducting Research/Writing for Professional publication	
	11 Leave	
	99 Other	
	Primary Purpose Code	X
	101 Alcohol Related	
	102 Anemia	
	103 Calcium Controlled	
	104 Cancer	
	105 Clear Liquid	
	106 Diabetes	
	107 Dumping Syndrome	
	108 Elimination	
	109 Fat Controlled	
	110 Full Liquid	
	111 Gestational Diabetes	
	112 Gluten Free	
	113 High protein	
	114 Hypoglycemia	
	115 Increased Fiber	
	116 Lactose Restricted	
	117 Low caffeine	
	118 Low Residue	
	119 Normal Nutrition	
	120 Potassium Controlled	
	121 Prenatal	
	122 Purine Restricted	
	123 Renal	
	124 Sodium Controlled	
	125 Tonsillectomy	
	126 Tube Feeding	
	127 Undernutrition	
	128 Vegetation	
	129 Weight Control	
	130 Other Clinical Diets	
	131 Other Clinical Duties	
	201 Consultation/Technical Assistance	
	202 Administration/Management	
	203 Educational Materials Review/Development	
	204 Chart Review and/or Quality Assurance	
	205 Staff Meetings	
	206 Employee Supervision/Counseling	
	301 Travel	
	401 Not Nutrition/Dietetics Related	
	999 Other	
	Encounter Code:	X
	1 First Visit	
	2 Follow-up Visit	
	3 Limited Series	
	4 Ongoing	
	9 Other	
	Recipient Code:	X
	01 Patient	
	02 Community	
	03 CHR	
	04 Health Team	
	05 Tribal Staff	
	06 Dietary Staff	
	07 WIC Client	
	08 WIC Staff	
	09 Commodity Foods Client	
	10 Commodity Food Staff	
	11 Headstart/Daycare Client	

NDPARS RECORD—Continued

Position	Field	Required
	12 Headstart/Daycare Staff	
	13 Elderly Nutrition Program Client	
	14 Elderly Nutrition Program Staff	
	15 Alcohol/Substance Abuse Program Staff	
	16 Alcohol/Substance Abuse Program Staff	
	17 Schools, Student	
	18 Schools, Staff	
	19 Government Agency Staff	
	98 No Recipient	
	99 Other	
	Recipient Age Code:	X
	1 Infant	
	2 Child	
	3 Adolescent	
	4 Adult	
	5 Elderly	
	6 All Ages	
	9 No Recipient Type	
	Recipient Type Code:	X
	1 Individual	
	2 Group	
	9 No Recipient Type	
	Delivery Setting Code:	X
	1 Hospital In-Patient	
	2 Clinic	
	3 Home	
	4 Community	
	5 Hospital Dietary Department	
	6 Public Health Nutrition Department	
	7 Administrative	
	9 Other	
	Number Reached:	X
	Record actual number of people reached	
	Write NA if no personal contacts were involved	
	Record zero (0) for missed appointments and meetings where no one came	
	Service Time:	X
	Record actual time spent in the activity (in hours and minutes)	

Figures N–1—N–4

O. Clinical Laboratory Workload Reporting System

1. Reporting Requirement

a. The workload recording system for IHS laboratories is contracted with the College of American Pathologists (CAP) national computerized workload system. Raw data are required to be collected monthly by the individual lab. CAP or a similar workload reporting system is recommended for contractors.

b. Workload data and productivity rates are computed, comparisons with other labs are included, and the report is sent back to the individual lab. Summary reports are sent by CAP to IHS Headquarters. Summary workload reports on a quarterly basis are the only requirement of IHS Headquarters.

c. The CAP Instruction Manual for Computer Assisted Workload Program describes the reporting system.

2. Record Formats

a. CAP forms are tailored for a specific lab, although the basic data elements collected (shown in Figure 0–1) are the same. Each portion of the lab completes its own form. If it is desired to electronically generate the CAP data, then CAP needs to be contacted for instructions.

b. A sample of a CAP form is included in Appendix A.

3. Transmission Media

a. Data is to be sent either by mail or electronic communication to the CAP computer center.

CLINICAL LABORATORY WORKLOAD REPORTING SYSTEM

Data elements	Required for CAP
1. Name of Lab	X
2. Month/Year	X
3. Procedure Name	X
4. CAP Code No.	X
5. Unit Value Per Procedure	X
6. Lab Section	X
7. Procedure Designation—IP/OP/QCSTD/REP.	X
8. Number of Procedures	X

From the above we get: Total Unit Value, Worked Productivity, Paid Productivity, Comparisons with other labs.

How we use it: For Determining Staffing, Scheduling, Space, Instrument and Equipment Requirements.

Figure O–1

P. Generic Activities Reporting System

1. Reporting Requirements

a. The Generic Activities Reporting System is an RPMS module, available as an ANSI MUMPS program capable of processing input documents from the eight activities reporting systems described previously by each of the respective programs: Community Health Representative Information System (CHRIS), Alcoholism Treatment Guidance System (ATGS/CDMIS–4), Community Health Activity Reporting System/Public Health Nursing (CHA/PHN), Dental Reporting System, Environmental Health Reporting System (EHRS), Health Education Resources Management System (HERMS), Nutrition and Dietetics Program Activities Reporting System (NDPARS), and Social Services and Mental Health (SSMH). The system is available at the discretion of the Area Information Systems Coordinator (ISC) and for use in accord with the Area Coordinator of the specific discipline program under consideration.

b. Use of this system shall be in accord with the needs of the Area

discipline. Programs have the option of sampling in this effort or requiring 100 percent reporting.

2. Record Formats

a. Discipline specific input documents as described elsewhere.

b. A table indicating common data elements is shown in Figure P–1.

3. Transmission Media

a. The responsibility for arranging to assure that the aggregate data files are kept current for service-wide concerns rests with the Area discipline program coordinator. The appropriate Area discipline program coordinator, along with other relevant Area staff and the contractor will need to determine how this will be resolved.

COMMUNITY HEALTH ACTIVITY REPORTING SYSTEM COMMON DATA ELEMENTS

Field name	Source
Facility	Standard IHS Codes (A/SU/FAC)
Tribe	Standard IHS Codes (Tribal Code)
Provider	Provide Code (Unique at FAC Level)
Service Date	Date (MMDDYY)
Service Location.	Standard IHS Codes (Community Code)
Activity	Discipline Specific Activity Codes
Recipient Group.	Set of Shared Codes
Sub-Group	Set of Shared Codes
Primary Purpose.	Discipline Specific Purpose Code
Secondary Purpose.	Discipline Specific Purpose Codes
Service Setting.	Set of Shared Codes
Number Served.	Numeric
Activity Time	Hours/Minutes
Travel Time	Hours/Minutes
Refer To	Set of Shared Codes
Refer From	Set of Shared Codes
IHS Chart Number.	Health Record Number
Age	Age in Years
Sex	Set of Shared Codes
Flag 1	(Yes/No Field defined by Discipline)
Flag 2	(Yes/No Field defined by Discipline)

COMMUNITY HEALTH ACTIVITY REPORTING SYSTEM COMMON DATA ELEMENTS—Continued

Field name	Source
Flag 3	(Five fold field A–E, defined by Discipline)
Flag 4	(Five fold field A–E, defined by Discipline)
Free Text Field.	Notes/Comments, use defined by Discipline)

Figure P–1

Q. Fluoridation Reporting Data System

1. Reporting Requirements

a. Fluoride ion analysis records and fluoridator maintenance and repair records for community water systems will be maintained and submitted for centralized processing as described in the IHS Fluoridation Policy Issuance dated August, 1981. Each water system must be identified by its assigned EPA/Sanitary Facility Code and include the date of the activity. The general surveillance procedures are described in Table O–1.

b. In most cases, local programs will report the required data on a weekly or monthly basis using any of several options:

(1) Submission of completed data forms directly to the IHS area office or IHS key entry contractor, or

(2) Submission of formatted records from data entered into local RPMS database, or

(3) Submission of formatted records form a local non-RPMS database.

The frequency schedule for submission of each type of fluoridation tracking data is shown on Table Q–2.

If the required data for water systems are maintained in an area data base, the data must be submitted for central processing to the IHS Division of Data Processing Services by the last day of each month.

c. Fluoridator maintenance and repair records presently can not be entered into the RPMS database, therefore, option 2 of Q.1.b. can not be employed by local programs to create these records until further notice. The accepted codes for reporting this type of activity is shown on Table Q–3.

2. Record Formats

a. The basic data elements for community fluoridation reporting are shown in Figure Q–1.

b. The keytape record format specifications for fluoride ion test results is shown in Figure Q–2 (formatted records can be extracted from existing RPMS software).

c. The keytape record format for fluoridator maintenance and repair records is shown in Figure Q–3. (Presently this record format can not be generated through the RPMS database).

d. An example of the standard input forms for reporting the results of (1) fluoride ion analyses and (2) maintenance/repair activity are shown in Appendix A, the use of these forms is not required, but is highly recommended when data are not keyed into a computer locally.

The form for adding or deleting water systems for data reporting purposes is shown in Appendix A. Use of this form is required when the status of a water system is to be changed.

Table Q–1 Fluoridation Surveillance Procedures

1. Control limits for fluoridated water systems

The fluoride level in fluoridated water systems should be maintained as close to the recommended concentration as possible, and in no case above or below the ranges noted below.

Annual average of maximum daily air temperatures (OF)	Recommended fluoride concentrations		Allowable range of fluoride concentrations	
	Community (ppm)	School (ppm)	Community (ppm)	School (ppm)
50.0—53.7	1.2	5.4	1.1—1.7	4.3—6.5
58.8—58.3	1.1	5.0	1.0—1.6	4.0—6.0
58.4—63.8	1.0	4.5	0.9—1.5	3.6—5.4
63.9—70.6	0.9	4.1	0.8—1.4	3.3—4.9
70.7—79.2	0.8	3.6	0.7—1.3	2.9—4.3
79.3—90.5	0.7	3.2	0.6—1.2	2.6—3.8

2. Sample Collection and Analysis

a. Samples for analysis should be obtained from a convenient tap on a main line of water system that is representative of the water throughout the system. In some systems with multiple sources more than one sample may be required.

b. Samples for fluoridation analysis should be collected and analyzed as follows:

- Weekly intervals w/split sample every fourth week.
- Anytime equipment failure or malfunction is suspected.
- Immediately following repair of equipment.

c. All fluoride monitoring instruments should have their measurement results verified by split sampling of the last sample collected each month. The split sample should be analyzed at a recognized laboratory, preferably an EPA or State approved facility.

3. Reporting

a. Analytical Results: Analytical results of all samples for each water system should be recorded on the Fluoride Analysis Report Form (HSA–T) and submitted to the address indicated on the form for data processing. Normally this should be done by the system operator.

b. Maintenance and Repair Reports: Fluoride system Maintenance and Repair Reports are important to assessing community maintenance and repair capacity, assessing reliability and appropriateness of various types of equipment and as a determinant of areas for further technical assistance and training. The IHS Fluoride Maintenance and Repair Report form (HSA–T) should be completed as maintenance or repair is performed and submitted for data processing to the address indicated on the form. All water sources within systems should be identified with a unique two digit identifier added to the sanitation facility number (unique EPA identifier number). The Area OEH should maintain a master list of sanitation facility codes and source number(s). These numbers should be used when reporting routine maintenance and repair activities. The Fluoride Maintenance and Repair Reporting System allows for information input by tribal, IHS, or other sources.

Table Q–2: Recommended Frequency Schedule for Submitting Fluoridation Data

Submisson of Forms

The following tabulation indicates the forms and submission schedules that are required in order to develop meaningful data reports:

Input form	Frequency of input	Reports generated	Frequency of reports	Prime responsibility for inputting form
Sanitary Facility Data System Form Parts A & B.	Annually (data as of Oct 1)	Sanitation Facility Data System Summary by Area/SU and replica of data input form.	Annually and upon request.	Area OEH designee.
Fluoride Analysis Report Form.	At least weekly is recommended.	Fluoride analysis Report	Monthly	Person doing fluoride concentration analysis.
Fluoride System M&R Report Form.	As M&R activities occur	Fluoride system M&R activity	Quarterly	Person performing the maintenance or repair.
Fluoride System Add/Delete Form.	As Fluoridators are added to or deleted from community water system.	No specific report—system will be added/deleted from the Fluoride Analysis Report or M&R Report as appropriate.	N/A	Area OEH Fluoridation coordinator

Table Q–3: Fluoridator Maintenance and Repair Input Codes

Types of Maintenance/Repair Activity

Feed Pump System:	
—Loss of Suction and/or prime	01
—Encrustation Removal—Suction Line	02
—Encrustation Removal—Feed Line	03
—Encrustation Removal—Pump	04
—Repair of Electrical Pump	05
—Repair of Mechanical Pump	06
—Repair of Flow Switch	07
—Repair Leak—Suction Line	08
—Repair Leak—Feed Line	09
—Repair Leak—Pump	10
—Other	11
Venturi System:	
—Cleaning of Flow Meter	20
—Cleaning of Needle Valve	21
—Encrustation Removal—Feed Line	22
—Encrustation Removal—Venturi	23
—Repair Leak—Plumbing	24
—Repair Leak—Softener/Saturator/Gaskets	25
—Other	26
Volumetric, or Gravimetric System:	
—Cleaning of Hopper	30
—Cleaning of Scraper	31
—Cleaning of Auger	32
—Other	33
Parts Required	40

Community Water Fluoridation Reporting

Fluoride Test Results

Data Element	Required
Sanitary facility code	X
Person conducting test	X
Fluoride test instrument	X
Fluoride test result	X

Equipment Maintenace and Repair

Data of maintenance
Sanitary facility code
Water source
Performer of maintenance
Repair code

Figure Q–1

Fluoride Test Results Record Layout

Dental Fluoride Record Formats

Record: Dental Fluoride Surveillance Keytape Transaction
Record length: 128, Recform: Fix-Blk Blksize: 2560, Blkfact: 20
Input/output source: Media—Internal name, Data set name
Out from keytaping: Mag tape: N/A, Unlabeled
Input to MRSDENQO: Mag tape: MRSTAPE, Unlabeled

Position	Length	Field name	Contents
1–2	2	Record code	"21".
3	1		Blank.
4–9	6	Report date	Date samples taken—MMDDYY.
10	1	Instrument used #1	"C", "I", "S", "T" or "X".

Position	Length	Field name	Contents
11–17	7	EPA sanitary facility code #1	Valid EPA–SFC (system) code.
18–20	3	Test results in PPM #1	Numeric with 1 assumed decimal.
21	1	Instrument used #2	"C", "I", "S", "T" or "X".
22–28	7	EPA sanitary facility code #2	Valid EPA–SFC (system) code.
29–31	3	Test results in PPM #2	Numeric with 1 assumed decimal.
32	1	Instrument used #3	"C", "I", "S", "T" or "X".
33–39	7	EPA sanitary facility code #3	Valid EPA–SFC (system) code.
40–42	3	Test results in PPM #3	Numeric with 1 assumed decimal.
43	1	Instrument used #4	"C", "I", "S", "T" or "X".
44–50	7	EPA sanitary facility code #4	Valid EPA–SFC (system) code.
51–53	3	Test results in PPM #4	Numeric with 1 assumed decimal.
54	1	Instrument used #5	"C", "I", "S", "T" or "X".
55–61	7	EPA sanitary facility code #5	Valid EPA–SFC (system) code.
62–64	3	Test results in PPM #5	Numeric with 1 assumed decimal.
65	1	Instrument used #6	"C", "I", "S", "T" or "X".
66–72	7	EPA sanitary facility code #6	Valid EPA–SFC (system) code.
73–75	3	Test results in PPM #6	Numeric with 1 assumed decimal.
76	1	Instrument used #7	"C", "I", "S", "T" or "X".
77–83	7	EPA sanitary facility code #7	Valid EPA–SFC (system) code.
84–86	3	Test results in PPM #7	Numeric with 1 assumed decimal.
87	1	Instrument used #8	"C", "I", "S", "T" or "X".
88–94	7	EPA sanitary facility code #8	Valid EPA–SFC (system) code.
95–97	3	Test results in PPM #8	Numeric with 1 assumed decimal.
98	1	Instrument used #9	"C", "I", "S", "T" or "X".
99–105	7	EPA sanitary facility code #9	Valid EPA–SFC (system) code.
106–108	3	Test results in PPM #9	Numeric with 1 assumed decimal.
109	1	Instrument used #10	"C", "I", "S", "T" or "X".
110–116	7	EPA sanitary facility code #10	Valid EPA–SFC (system) code.
117–119	3	Test results in PPM #10	Numeric with 1 assumed decimal.
120–128	9	Analyst I.D	Alphanumeric.

Figure Q–2

Fluoridator Maintenance and Repair Data Record Layout

Dental Fluoride Record Formats

Record: Dental Fluoride Maintenance/Repair Keytape Transaction
Record length: 128, Recform: Fix-Blk, Blksize: 2560, Blkfact: 20
Input/Output source: Media . . . Internal name, Data set name
Out from keytaping: Mag tape: N/A, Unlabled
Input to DFSM10DO: Tape: DFSKYTP, Unlabled

Position	Length	Field name	Contents
1–2	2	Record code	"22".
3	1		Blank.
4–9	6	Date of repair/maintenance	Date in MMDDYY format.
10	1		Blank.
11–17	7	EPA sanitary facility code	Valid EPA SFC (system) code.
18	1		Blank.
19–20	2	Water source	Numeric not blank.
21	1		Blank.
22	1	Tribe performed maintenance	"X" or blank*.
23	1	IHS–OEH performed maintenance	"X" or blank*.
24	1	IHS–dental performed maint	"X" or blank*.
25	1	Others performed maintenance	"X" or blank*.
26–28	3		Blank.
29	1	Inspection made	"X" or blank.
30–32	3		Blank.
33	1	Fluoride added	"X" or blank.
34–36	3		Blank.
37	1	No fluoride on hand	"X" or blank.
38–40	3		Blank.
41–42	2	Repair code #1	Valid repair code or blank.
43	1		Blank.
44–45	2	Repair code #2	Valid repair code or blank.
46	1		Blank.
47–48	2	Repair code #3	Valid repair code or blank.
49	1		Blank.
50–51	2	Repair code #4	Valid repair code or blank.
52–128	77		Blank.

*One of these fields should "X" and all others blank.

Dated: March 9, 1990.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 90–17092 Filed 8–6–90; 8:45 am]

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Federal Register

Tuesday
August 7, 1990

Part VI

Environmental Protection Agency

40 CFR Part 79

Fuels and Fuel Additives Registration; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 79

[FRL-3811-2]

RIN 2060-AC10

Fuels and Fuel Additives Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This action announces EPA's intent to develop regulations and establish program protocols and test procedures related to the testing of motor vehicle fuels and fuel additives for purposes of registration as prescribed in section 211 (b) and (e) of the Clean Air Act. The regulations are to provide for tests to determine potential public health effects and such other information as is reasonable and necessary to determine emission control system effects and welfare impacts. The regulations will apply to current and future fuels and fuel additives required to be registered under section 211. By law, the regulations may also incorporate small business and cost sharing provisions and provisions to guard against duplicative testing.

DATES: EPA will conduct a hearing on this Advance Notice of Proposed Rulemaking (ANPRM) on September 26, 1990 in Ann Arbor, Michigan. The hearing will convene at 9 a.m. and will adjourn at such time as is necessary to complete the testimony. Written comments on this ANPRM will be accepted for 30 days following the hearing.

ADDRESSES: The hearing will be held at Domino's Farms in Ann Arbor, Michigan (313-930-5032). Domino's Farms is located on Earhart Road just one quarter mile east of Plymouth Road at US-23.

Comments on the ANPRM should be submitted in duplicate to: EPA Air Docket (LE-131); Attention: Docket No. A-90-07; U.S. Environmental Protection Agency, Room M-1500, 401 M Street SW., Washington, DC 20460, (202) 382-7548. This docket is located at the above address on the first floor of Waterside Mall and is open for public inspection weekdays from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for copying services.

FOR FURTHER INFORMATION CONTACT: Mrs. Carolyn Krueger, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4274.

SUPPLEMENTARY INFORMATION:

I. Public Hearing

Any person interested in presenting testimony at the public hearing 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.

Mr. Richard D. Wilson, Director, Office of Mobile Sources, Office of Air and Radiation, has been designated as the 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.

II. Introduction

EPA is announcing its plans to implement its statutory authority to assess the effects of motor vehicle fuels and fuel additives on the public health, welfare, and emission control systems. The program being developed is expected to be an important means of gathering information about the health and welfare effects of fuels and fuel additives. Based on the test data and other information obtained, EPA will be able to evaluate whether any limits are needed on fuels and additives under the statutory criteria in section 211(c).

EPA has recently started the development of the proposed rules and welcomes public input regarding the best way to structure the program to achieve the Congressional goals. EPA is interested in ways to make the program manageable, minimize undue burdens, and at the same time ensure that an adequate level of testing is done. This ANPRM will discuss issues and options involved in determining potential public health, welfare, and emission control system effects of fuels and fuel additives.

This Advance Notice is organized to highlight topic areas and issues that are important for program development. In some cases, EPA has identified its tentative plans as a basis for inviting comment. In other areas, where the preliminary plans are less developed, the notice raises questions and solicits information from commenters. EPA has identified a number of topics and questions in this notice upon which it particularly seeks comments. Comments and suggestions from the public, the affected industry, environmental interests, and the scientific community are especially sought.

The remainder of this notice is divided into the following general areas. Following this introductory section, a summary of the statutory authority in this area is given together with a chronology of past actions and recent developments. This is followed by a fairly broad discussion of the design and implementation issues related to the fuel and fuel additive testing program. Based on this discussion and analysis, the next section describes in general terms a possible program approach for health, emission control system, and welfare testing and assessments. The ANPRM closes with an invitation for public participation and a detailed list of questions and issues on which EPA desires comment.

III. Statutory Background and Provisions

Section 211(a) of the Clean Air Act (CAA), 42 U.S.C. 7545, gives the Administrator the authority to require the registration of fuels and fuel additives prior to sale or introduction into commerce. EPA issued such regulations in 1975 (40 CFR part 79).

In 1970, EPA was given authority (Public Law 91-604, December 31, 1970) to require certain tests and other information before registration of fuels and additives. More specifically, section 211(b)(2) provided that EPA "may also require" the manufacturer "to conduct tests to determine potential health effects" (including carcinogenicity, teratogenicity, and mutagenicity) of fuels and fuel additives and to require other "reasonable and necessary" information to identify emissions and their effect(s) on the emission control system performance of vehicles or vehicle engines and the public health or welfare. Tests for health effects are to be conducted according to procedures and protocols established by the Administrator and any results will not be considered confidential. Also, section 211(b)(3) states that the Administrator shall grant registration if the above provisions are satisfied including assurances that the Agency will receive any future changes in the information required.

Although the general registration regulations were implemented in 1975, EPA did not implement the discretionary authority to require health, welfare, and emission control system effects testing

under section 211(b)(2) or establish procedures and protocols for these tests. In the CAA Amendments of 1977, Congress added a requirement to section 211 (Public Law 95–95, August 7, 1977). This requirement, codified at section 211(e), mandates that the Administrator implement the section 211(b)(2) authority and provides additional discretion concerning the implementation of the section 211(b)(2) testing requirements.

Section 211(e)(1) requires implementation of the section 211(b)(2) authority within one year of enactment of the amendments. Section 211(e)(2) also establishes time limits by which producers must comply with the regulations. For those fuels and additives not registered at the time the section 211(b)(2) regulations are promulgated, the "requisite information" must be submitted prior to registration. For fuels and additives registered at the time of promulgation the information must be provided "no later than three years" after promulgation of the section 211(b)(2) regulations. Section 211(e)(3) allows the Administrator to exempt or make special exceptions for any small business, to provide for cost and/or burden sharing with respect to any fuel or additive manufactured by two or more entities, and to exempt any person from such regulations where additional testing would be duplicative of adequate existing testing.

In an effort to fulfill the section 211(e)(1) requirement that regulations be promulgated within one year, EPA published an ANPRM in 1978 (see 43 FR 38607, August 29, 1978; Docket ORD–78–01); however, neither a proposed nor final rule was issued. Nevertheless, it has always been EPA's intention to develop the required regulations. This action has remained on the EPA regulatory agenda and a development plan for the rulemaking was created in 1988.

Even though the section 211(b) testing requirements were not implemented when required, there have been other efforts related to fuels and additives over the past ten years. The fuel and fuel additives registration program is currently operative. Section 211(f) and the EPA interpretive rule on "substantially similar" fuels (46 FR 38582–38586; July 28, 1981) have served to control the market entry place of fuels and direct additives absent a waiver under section 211(f)(4). Also, EPA's Draft Alternative Fuels Research Strategy provides broad direction concerning the research needed to assess the potential relative public health and welfare risks of various fuel formations in production, transport, storage, and vehicle use. A copy of this "Draft Strategy" is available in the public docket; inquiries should be directed to EPA's Office of Research and Development. In addition, the literature reflects the results of a number of programs conducted to evaluate adverse effects of fuels and additives. A list of many of the reports published in this area can be found in Docket No. A–90–07. Thus, while the required section 211 program will provide valuable additional information for assessing risk, there have already been some activities that relate to fuels and additives.

Some recent developments have renewed EPA's commitment to issue the regulations as called for by the statute. First, a July 19, 1989 citizens petition under section 211 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, requested the Agency to initiate a rulemaking under section 4 of TSCA to require testing of methanol fuels by their manufacturers and/or processors. An October 17, 1989 letter from EPA Assistant Administrator Linda J. Fisher announced that EPA would initiate a proceeding under the joint authority of section 211 of the CAA and section 4 of TSCA to consider health and environmental effects testing of all motor vehicle fuels including fuels currently in use and those undergoing development.

Second, a citizens group brought a lawsuit challenging EPA's failure to promulgate regulations within the one-year period provided for in CAA section 211(e). *Thomas* v. *Reilly*, C.A. No. 89–6269 (D. Oreg. 1989). EPA has entered into a Consent Decree in settlement of this lawsuit, without the adjudication of any issue of fact or law, and the Decree has been signed by the Court. Under the Decree, the EPA Administrator is to sign a Notice of Proposed Rulemaking for publication in the **Federal Register** by January 1, 1992, and to sign a Final Rule by June 1, 1993. By its terms, the Consent Decree "is not addressed to the substance of the rulemaking" and nothing in it is to be construed "to limit or modify the discretion accorded * * * by section 211 * * * or general principles of administrative law in any fashion".

IV. Fuel and Fuel Additive Program Design and Implementation Issues

A. Introduction

The CAA requirements clearly indicate that the fuel and fuel additive program provided for in section 211 is potentially vast in scope and raises difficult implementation issues. This notice presents the factors that will influence program design and discusses how the requirements of the Act can best be implemented in light of statutory and practical constraints.

The statutory provisions governing the fuel and fuel additive program were discussed above. In summary, section 211(b)(2)(A) requires testing to determine potential public health effects of the fuels and fuel additives themselves. In addition, section 211(b)(2)(B) provides authority for obtaining reasonable and necessary information related to the emissions resulting from a fuel or fuel additive, and the effect of such emissions on the performance of the emission control system, and an assessment of the effect of such emissions on the public health and welfare. Furthermore, section 211(e)(2) requires the "requisite information" for registration to be supplied to EPA within certain time limits and section 211(e)(3) includes provisions which clearly indicate that cost-sharing is to be taken into consideration in developing such a program. The legislative history also indicates that costs should be considered in promulgating test requirements and that the regulations are not to be "unduly burdensome." H.R. Rept. No. 95–294, 95th Cong. 1st Sess. 308–09 (1977).

At the same time, there are a number of practical factors which affect how these requirements can be implemented. First, there are over 6000 active-registered fuels and fuel additives which could potentially be subject to health effects tests and the other requirements discussed above. This is more than twice the number registered when the section 211(e)(1) requirement was established and, as discussed below, these are expected to grow in number in the future. To require all of the approximately 6000 fuels and additives to undergo extensive individual testing concurrently would place onerous administrative burdens on the program, would also be very resource-intensive and could easily exceed the capacity to conduct such tests. Moreover, testing of each fuel and additive is not needed if they present essentially the same risks of public health and welfare and emission control impacts.

Second, fuels/additives consist of variable complex mixtures. Dealing with mixtures and their emissions present difficulties in determining what to test (*i.e.*, whole mixtures, fractionated components, transformation products, etc.) and how to test it. While some detailed test procedures do exist for some exposure routes, health effect end points, etc., some, as for atmospheric

transformation products, may be undeveloped. The state of knowledge regarding test procedures will significantly influence the ability of EPA to prescribe the appropriate testing procedures. Furthermore, tests such as long term cancer bioassays ordinarily require more time than the three-year period specified for submission of requisite information for fuels and additives registered at the time the rule is promulgated. In some cases, especially in chronic testing, it may not be possible to obtain accurate and conclusive results within the prescribed time specified by the Act.

Third, health, welfare, and emission control system impact testing is costly to administer and conduct on a case-by-case basis and, given the potential number of fuels and additives and types of tests which may need to be conducted, the overall costs of an exhaustive program would be burdensome.

Fourth, complicating this further is the fact that at present there are only a relatively limited number of test laboratories capable of conducting such testing and other evalutions, and fuel and fuel additives work would not be the only type of testing being handled at these facilities. In addition, testing for atmospheric transformation products and their impact on air quality and health effects may present an even greater difficulty in this area.

The statutory requirements and practical constraints present what may appear to be a conflict between the goals and the means of achieving them. The statute calls for health, welfare, and emission system impact testing to be done and provides a specified time frame for submitting information with due consideration to be given to cost and undue burdens. A review of the practical factors suggests that this could be difficult since the fuel and fuel additive population is large, tests are time consuming, costly and sometimes inconclusive, and laboratories and other facilities capable of doing the testing are limited in number.

The statutory mandate and its legislative history provide for some measures that help alleviate the burden. As discussed above, the statute contains provisions for cost-sharing and non-duplicative testing, as well as a small business exemption. Pursuant to the applicable legislative history, costs and the prevention of undue burdens are to taken into account in developing the test requirements. Moreover, "relatively inexpensive but reliable test methods" are to be used "insofar as possible." H.R. Rept. 95–294, 95th Cong. 1st Sess. 309 (1977). The statute also relies on EPA's judgment in establishing the test program. With respect to the timing of data submission, EPA has discussed below a number of options which could provide additional time for testing when more time is needed.

In exercising its regulatory judgment, it is EPA's intent to develop a workable, useful program which satisfies the goals of the Act, allows for the adequate assessment of potential health, welfare, and emission control system performance impacts as required, but does not introduce an infeasible or needless testing burden on the producers of the fuels and additives. Determining representative fuels and additives to test, the tests to which they should be subjected, and the criteria to be used for such determination, will be an important part of this rulemaking. The program design needs to focus on the potential effectiveness of a given regulatory requirement in meeting the goals of the Act and whether the results of such requirements will provide useful information for decision making.

The fuel and fuel additive testing program will represent a Congressionally-mandated risk assessment for potential adverse effects on human health, welfare, and emission control system performance. Since risk is a function of exposure and toxicity (or effect), one key tenet of the program will be to assess potential risk using these factors. Consideration will be given to production volume and known toxicological or other properties in determining the amount of testing needed. Furthermore, it will be important to make appropriate use of the section 211(e)(3) provisions to reduce costs and eliminate replicate or unnecessary testing. Previous testing, the known similarity of many fuels and additives, and the current state of knowledge of the risks associated with present fuels and additives must be taken into account.

The remainder of this section of the notice discusses some of the key program design and implementation issues in more detail. This includes more detailed discussions, analyses, and requests for comment on both the statutory requirements and the practical design factors mentioned above.

B. Designation of Fuels and Fuel Additives

Under the current fuel and fuel additive registration regulations, motor vehicle gasolines, diesel fuels and their additives are the only designated fuels and additives for purposes of registration (See 40 CFR part 79). There are currently approximately 2240 active-registered fuels and 3790 active-registered fuel additives which means that, depending on program design, a significant amount of testing could be required. Recent developments in the area of alternative fuels suggest that such fuels and their additives should also be covered by the regulations covering gasoline and diesel fuels. Given the potential for a major expansion of these fuels into the marketplace in the future, EPA is now considering issuance of a proposal which would designate several additional motor vehicle fuels and heir additives for registration. (55 FR 16876, April 23, 1990) This could include: methanol, ethanol, or any other motor vehicle alcohol fuel [1], liquified petroleum gas, and compressed natural gas. These changes would expand the types of fuels and additives requiring registration.

Given the large number of individual fuels and additives involved, EPA is considering measures to reduce the cost/testing burden while at the same time still meeting the requirements of the program as called for in the Act. Authority for these provisions is found in section 211(e)(3) of the Act. Section 211(e)(3)(A) provides for special requirements for small business.

Section 211(e)(3)(B) provides for cost/burden sharing for a fuel/additive produced by more than one person. Finally, section 211(e)(3)(C) removes the need for additional testing when previous testing is adequate to meet the requirements. Discussions and some possible concepts in each of these three areas is provided below.

In addition, EPA recognizes the importance of avoiding test requirements which lead to the unnecessary use of animals. Each of the concepts below would contribute to this objective. Furthermore, later in this notice the Agency requests comment on other approaches, such as tiered requirements, the use of non-animal test systems where appropriate, and the use of structure/activity and physical chemical data which would also limit testing requirements and unnecessary animal use.

C. Provisions to Prevent Undue Burdens

1. Small Business Provisions

In order to prevent the testing requirements from being unduly burdensome, the CAA gives the Administrator authority to exempt or

[1] Alcohol fuel would likely be defined as a motor vehicle fuel containing at least 50 percent alcohol by volume. Mixtures of alcohols and gasolines would likely be registered as a gasoline if the alcohol content was less than 50 percent.

provide deferrals or modifications for small businesses; however, "small business" must be defined in the regulations. EPA is considering a definition including sales/revenue alone or in combination with an annual production volume for a given fuel/additive as part of this definition. In addition, the toxicity or potential risk of the fuel or fuel additive may be taken into consideration. While sales/revenue may be more appropriate to get at the ability to pay aspect of a small business provision, annual production volume, together with the toxicity of the material, is very important when it comes to assessing the potential risks to the public health, welfare, and emission control system performance. EPA requests comment on what sales/revenue thresholds are appropriate for different fuels and additives and what other financial criteria or other parameters should be considered. EPA also requests comment on how the requirements for small businesses should be different from those that apply in general. The September 30, 1988 User Fee Rule under TSCA section 26 (40 CFR 700.40) defined a small business concern as any person whose total annual sales in the fiscal year preceding the date of submission of the applicable section 5 notice, when combined with those of the parent company (if any), are less than $40 million. A similar definition is used for TSCA section 8 reporting rules (40 CFR 704.3). EPA requests comment on the applicability of these definitions to the fuels and fuel additives program.

Producers of fuels and fuel additives are strongly encouraged to be certain that the annual production volumes they have reported to EPA under the fuel and fuel additive registration program are accurate and current. This information is essential if EPA is to develop workable provisions for small businesses. Inaccurate or incomplete information could result in less than optimum provisions and the possibility that fuels/additives or individual producers thereof would be precluded from small business provisions since information was lacking to demonstrate that they should have been included.

2. Cost/Burden Sharing Provisions

As was discussed above, the provisions of section 211(e)(3)(B) provide a means to reduce the cost and burden of the fuel and fuel additives program. These provisions permit producers of any fuel or fuel additive which is manufactured or processed by two or more persons to share costs or responsibilities under the program so that requirements can be met without duplication of effort. This involves both procedural issues on how producers would share the costs and burdens involved and program matters on how fuels and additives could be grouped for purposes of enacting these provisions. Procedural implementation is discussed below. However, the concept of grouping for testing purposes has section 211(b)(2) implications with regard to EPA's approach to implementing protocols, so it will be discussed in a separate section.

With regard to procedural implementation of this provision there are two possible situations. The first involves the case where sufficient information exists for the registration of a product without the completion of additional testing because a manufacturer or other entity has already completed the required testing. In this case, the first entity has already incurred all necessary costs while the second manufacturer might seek to simply use the results of this testing as sufficient existing testing and claim exemption from further testing (and the associated expense). The second case involves two or more producers of similar existing or new products who need to undertake the same testing requirements prior to registration. Two or more entities would expend the same effort to accomplish the same result and would use the limited test facilities to duplicate the same tests.

Section 211(e) allows the Administrator to provide for manufacturers of the same fuel or additive to share the cost of complying with the regulations and he may also provide for manufacturers of the same fuel or additive to share the responsibilities of complying with the testing regulations. To implement this authority in the first case, the manufacturer who conducts tests of a product would be recognized under section 211(e)(3)(B) as having a right to cost-sharing from others who wish to reply on that testing for purposes of section 211. These other manufacturers would not be able to use the first manufacturer's test results without reaching an agreement on sharing the cost. The Agency invites comment on whether the provisions should be applicable to provide for cost-sharing when one manufacturer has submitted test results that others wish to rely upon in meeting their testing obligations. In cases where two or more producers need prospectively to complete the same testing, they could form a consortium to complete the requirements and submit the results as a group. Any additional manufacturers desiring to rely on that testing for their product would then be charged a fee by the original producers to use these results rather than conduct their own testing. The agency requests comments regarding this approach and solicits other suggestions. In all cases, under section 211(b), the test results submitted to EPA would not be confidential.

EPA also invites comments on some additional matters in this area. These cost-sharing provisions would not be expected to be available for existing tests if the full test results have already been published. Should any limits be set for the fees that may be charged for use of test information and especially when tests are a number of years old? Should the reimbursement provisions of section 4 of TSCA be considered a model for handling cost-sharing questions?

EPA has extensive experience under TSCA section 4 with cost-sharing for testing. EPA has found that persons conducting testing under section 4 have chosen in each instance to date to work out their own arrangements for cost-sharing or reimbursement without any need for EPA involvement. EPA issued regulations in 40 CFR part 791 for data reimbursement. In spite of the significant number of test rules issued under TSCA, no one has invoked any of the formal procedures for data reimbursement under the regulations. EPA solicits comment on whether a similar result is likely under the section 211 testing program.

3. Grouping of Fuels and Additives for Testing

As was mentioned above, to implement the section 211(e)(3)(B) provisions, the regulations may include criteria to determine which fuels or fuel additives are essentially the same for the purposes of determining potential public health effects and meeting other requirements. If the fuels or additives are essentially the same as other fuels or additives, grouping for testing purposes would prevent duplicative testing under section 211(e)(3). Fuels and additives are complex mixtures and, in grouping them, it is necessary to establish criteria for judging if two or more fuels/additives are essentially the same. This criteria can initially involve evaluation of the chemical composition and/or structural activity properties of fuels/additives for the appropriate degree of sameness. Such categorization reduces the burden of testing, which is important given the great number of compounds involved and the lack of test facilities. From each of these groups, representative and/or possibly toxic fuels and additives could be selected to

undergo the testing requirements. This would eliminate the need for each fuel and fuel additive to undergo testing. To accomplish this end, however, potential groups will need to be established as well as the criteria by which fuels and additives will be assigned to such groups.

The definition of "essentially the same" by which fuels and additives can be grouped can be a very broad definition or it can be narrow in scope. A strict definition would group fuels and additives according to narrow criteria, would emphasize the differences among chemicals, and would therefore result in a very large number of groups. On the other hand, defining "essentially the same" more broadly would result in fewer groups where the differences between fuels and fuel additive groups could be greater. Under this approach, several representatives of the group might be subject to testing, whereas only one member may be in the former case. (In both cases, this assumes adequate information does not now exist). For example, a recent EPA technical memorandum, "Analysis of Aftermarket Fuel Additives Containing Methanol" (available in Docket No. A–90–07), shows that a large number of the aftermarket fuel additives considered contain almost all methanol; however, there is a small portion that contains a large number of other compounds as well. In trying to group these additives on the basis of an "essentially the same" definition it would be necessary to determine if they should be grouped together based on the fact that they all contain methanol, or they should be split into a number of subgroups as deemed appropriate based on the other chemical compounds and/or structures involved. For each group that is formed, one or more representatives could be selected for testing if needed. As can be seen, grouping the products more strictly could result in more than would have to be tested.

The provisions of CAA section 211(f) have provided some experience with determining fuels and additives which are "substantially similar" to other fuels and additives in a different setting that focuses on emission control system effects. In a 1981 Interpretive Rule (46 FR 38582–38586; July 28, 1981), EPA has defined an unleaded gasoline to be "substantially similar" to the certification fuel used in 1975 or later model year vehicles or vehicle engines if it contains carbon, hydrogen, and oxygen, nitrogen and/or sulfur in some form of hydrocarbon, aliphatic ether, aliphatic alcohol (with some limitation on type of alcohol), with fuel additives containing only carbon, hydrogen, and oxygen, nitrogen, and/or sulfur, and meets certain limitations regarding the amount of fuel additive, sulfur in the additive, and alcohol present in the fuel. Fuels not meeting these criteria are not considered "substantially similar" to the above-mentioned certification fuel. Related materials can be found in the public docket. EPA invites comments on whether these determinations or similar approaches are useful alone or with other factors for grouping fuels/additives for testing purposes for determining public health, emission control system, and/or welfare effects. Comment is also invited on whether the structure activity relationship should be the basis for grouping.

EPA also plans to examine its registration data to determine if they provide a useful basis for grouping fuels and additives for testing. The results of an analysis to be conducted pursuant to a contract will be included in the public docket when available. EPA invites comments on the appropriate way to group fuels and additives and the criteria to be used. The most important concern in grouping fuels and additives would be their sameness for purposes of potential toxicity and emission control and welfare/environmental effects.

4. Duplicative and Existing Tests

Under CAA section 211(e)(3)(C), the Administrator "may" exempt any fuel or additive from the regulations "upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing." Moreover, under section 211(c)(2)(A), the Administrator can only control or regulate a fuel on the basis of all relevant medical and scientific evidence available to him.

To structure the testing program and to determine if there is duplicative testing, it is important to obtain results from existing tests on fuel and fuel additives at an early point. It is also necessary to determine what testing has been initiated. Since it typically takes several years for a report to be made public, to avoid unnecessary duplication, it is important to be knowledgeable about ongoing work. Testing to deal with some of the health, emission or welfare effects of fuels and fuel additives may have been conducted for various reasons and be available from various sources.

In connection with this proceeding, to help obtain information on existing testing on a timely basis, EPA is considering amending the registration provisions in 40 CFR part 79, subpart D (implemented under section 211(b)(1)), to ensure that producers provide a summary of any published testing or a detailed report of unpublished results done by the producer including tests for EPA or other government agencies that relate to health and other effects covered by section 211. This includes carcinogenicity, mutagenicity, teratogenicity and other health effects of raw fuels/additives, combustion and possibly atmospheric transformation products as well as information on the effects of the emissions on the emission control system, the environment, and the public health and welfare in general. Furthermore, as part of the possible program protocol described below, EPA may require the manufacturers to conduct a literature search and submit studies or a summary of available information relating to the hazards and impacts of the fuel(s) or additive(s) the manufacturer produces. Such information can be considered reasonable and necessary to determine the extent to which emissions affect the public health and welfare under section 211(b)(2).

EPA sees this as a key provision and invites comments on this measure and on the criteria and procedures that should be used to determine whether any fuel or additive should be exempt on the grounds that adequate existing information exists.

D. Health Testing Protocols and Requirement Issues

Section 211(b)(2) provides that tests are to be conducted according to test procedures and protocols established by the Administrator. The section could be read as simply requiring adherence to specific guidelines identified by EPA, rather than requiring EPA to establish specific test plans or procedures in every case before testing is done. EPA might provide for the use of generally accepted or best available scientific test guidelines or plans in the absence of a requirement for a specific procedure. The statute also does not specify the extent to which the test requirements should be mandated by regulation, identified in guidelines as acceptable models, or established on a case-by-case basis.

Given the large number of fuels and fuel additives and the compounds contained therein and the potential number of health effects endpoints, identifying appropriate test guidelines is important. This section reviews the currently available health testing and risk assessment guidelines, the factors bearing on the need to develop guidelines, and asks for comments on the best approach to meet the requirements of the Act.

1. Existing Health Effects Testing Protocols

There are several existing sources of established health testing guidelines. These include the TSCA, Health Effects Testing Guidelines (40 CFR part 798), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Toxicology Data Requirements (40 CFR 158.340), and the Organization for Economic Cooperation and Development (OECD) Guidelines for Testing of Chemicals.[2]

In addition, there have been several studies commissioned throughout the past 10 years which were aimed at determining a proposed approach for testing of fuels and additives.[3, 4, 5, 6]

Each of the five sets of established health testing guidelines mentioned above represents generally-formulated procedures for laboratory testing of an effect or characteristic deemed important for the evaluation of health and environmental hazards of a chemical. The health effects that are included are primarily acute, subchronic, and chronic toxicology (dermal, oral, and inhalation) as well as oncogenicity and genetic toxicology.

These protocols provide guidance and to a varying degree details on acceptable models of testing design, but more specific guidance may be needed in particular cases. However, the potential scope of the fuel and fuel additive testing program is such that providing these specifics beforehand in each case is generally impractical. EPA invites comments on the adoption of these guidelines for fuel and fuel additive testing and on the extent to which more specific guidance is needed and the manner in which it should be provided.

While resource intensive for EPA and time consuming, one possible approach for the more complex and comprehensive tests is to provide more specific guidance on a case-by-case basis. This approach might require the producer to prepare test plans for EPA approval as is presently used by EPA in its TSCA section 4 test rule for dibenzo-para-dioxins/dibenzofurans (40 CFR part 766). Alternatively, EPA might allow the producer to develop the plans and conduct such testing without EPA approval but with EPA approval of the acceptability of the results and retesting if unacceptable.

Because of the number of fuels/additives that could be tested, it is desirable, if possible, to have model guidelines that can be used without the need for a unique plan and EPA review in each case. Are the present guidelines, particularly the TSCA guidelines, sufficient to achieve the goal? Should the guidelines be presumed to be appropriate unless, in a particular case, a manufacturer shows the need for or appropriateness of using different guidelines?

A major issue is the availability and appropriateness of various guidelines for testing emissions/combustion products. As is discussed and referenced below, the carcinogenicity of diesel fuel as combusted has been tested. Do the test protocols used in these studies provide an appropriate model for testing of the combustion products of fuels and fuel additives? What procedures should EPA use for protocol review and at what point should these reviews occur if needed?

In addition to the health effects testing guidelines, EPA has also issued five risks assessment guidelines: (1) "Guidelines for Carcinogen Risk Assessment" (51 FR 33992–34003, September 24, 1986); (2) "Guidelines for Mutagenicity Risk Assessment" (51 FR 34006–34012, September 24, 1986); (3) "Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014–34025, September 24, 1986); (4) "Guidelines for the Health Assessment of Suspect Developmental Toxicants" (51 FR 34028–34040, September 24, 1986); and (5) "Guidelines for Exposure Assessment" (51 FR 34042–34054, September 24, 1986). Also, during the last few months EPA has proposed new guidelines for reproductive risk assessments and a new guideline that supplements the guidance in the 1986 exposure guidelines. These are: (1) "Proposed Guidelines for Assessing Male Reproductive Risk and Request for Comments" (53 FR 24850–24869, June 30, 1988); (2) "Proposed Guidelines for Assessing Female Reproductive Risk; Notice" (53 FR 24834–24847, June 30, 1988); (3) "Proposed Guidelines for Exposure-Related Measurements and Request for Comments; Notice" (53 FR 48830–48853, December 2, 1988); and (4) "Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants; Request for Comments, Notice" (54 FR 9386–9403, March 6, 1989). EPA requests comment on the applicability of the risk assessment guidelines to the program to be developed under section 211(b)(2).

2. Laboratory Capabilities

A second important factor to consider is the capability of the nation's testing facilities to handle the volume of testing that could potentially be generated both in the near term and in the future. EPA invites comment on the existing capacity for such testing as well as the capabilities among testing facilities. If only a limited number of laboratories are capable of performing a certain test, the priorities for testing must be carefully considered, especially in the short term, so as not to unduly burden producers and testing facilities and to ensure sound tests. For example, the EPA staff is aware of only approximately three facilities capable at present of conducting inhalation studies with vehicular combustion emissions. EPA especially invites comment from the scientific community on the capability of test laboratories, and is now conducting an independent study of current capabilities. This report, entitled, "EPA Census of the Toxicological Testing Industry", will be placed in the docket when completed.

3. Health Effects Endpoints

As discussed earlier, the CAA provides for the Administrator to require testing to determine potential public health effects including carcinogenicity, mutagenicity, and teratogenicity. Testing is not necessarily to be limited to these health effects but, rather, may include testing for systemic toxicity, cardiovascular and inhalation effects, neurotoxicity, metabolic effects, acute effects (oral, dermal, inhalation), effects on mucous membranes, etc. The legislative history indicates that the testing protocols should be "reasonably comprehensive". H.R. Rept. No. 95–294, 95th Cong., 1st Sess. 309 (1977). This rulemaking will determine which health effect endpoints need to be included as part of the testing program.

4. Exposure Routes and Levels

Along with determining which health effect endpoints to include in the program, the routes and levels of exposure to fuels, fuel additives, and their emissions must also be decided for animal testing. People are exposed to the raw fuel or additive itself through accidental ingestion or eye and skin contact. The inhalation of vapors also

[2] "OECD Guidelines for Testing of Chemicals"; ISBN 92–64–12900–6; 1981.

[3] "Possible Approaches to the Health Effects Testing of Fuels and Fuel Additives"; Litton Bionetics, Inc.; Technical Directive No. 008, EPA Contract No. 68–02–3682; Draft Report, July 1983.

[4] "Use of Short-Term Genotoxic Bioassays in the Evaluation of Unregulated Automobile Emissions"; Litton Bionetics, Inc.; EPA Contract No. 68–02–3682; Final Report, October, 1983.

[5] "Validation of Chemical and Biological Techniques for Evaluation of Vapors in Ambient Air/Mutagenicity Testing of Twelve (12) Vapor-Phase Compounds"; EPA Contract No. 68–02–3170–082; EPA–600/1–84–005; March, 1984.

[6] "Testing for Health Effects of Fuels and Fuel Additives"; Southwest Foundation for Research and Education; EPA Contract No. 68–02–2286; Draft Report, 1978.

causes contact with the raw fuel or additive. Combustion products as well as atmospheric transformation products of the emissions of fuels and additives are usually inhaled or may cause a wide array of effects. These exposure scenarios indicate that the most likely routes of exposure would be inhalation, oral, dermal, and ocular.

Besides route of exposure, in dealing with emissions of fuels/additives, it is also important that the pollutant level, duration, and pattern of exposure for the test protocols be determined. Concentrations used are usually much higher in laboratory tests than encountered in the environment because the laboratory tests are conducted on a small number of animals and are supposed to provide results more quickly than they could be observed in the natural situation. Exposure can be a single exposure, long term, or can occur at intervals. Periodic exposure can occur at regular or varying intervals. In addition, during periodic exposure, the concentration can either be uniform or increasing/decreasing.

Since significant exposure to motor vehicle fuels and fuel additives is in the form of combustion and atmospheric transformation products present in the air they breathe, it is appropriate that these be considered in any testing program. Atmospheric transport and transformation of emissions may lead to increased toxicity. In addition, the fuel formulation itself impacts air quality and health effects by contributing toward ozone, formaldehyde, and other toxics and/or carcinogens. In testing combustion products, how should the test sample be determined? Should the whole exhaust, fractionated samples, or some combination of these be tested and, if so, what criteria should be applied? To what extent and in what way should this program consider atmospheric transformation products?

5. TSCA Guidelines and Test Criteria

EPA is considering using some of the basic approaches and test procedures implemented under TSCA for evaluating chemical substances as guidance in developing testing criteria and test methods for fuels and fuel additives. The underlying testing philosophy and regulatory approach of TSCA would be used as guidance in developing testing criteria and test methods for use in the fuels and fuel additives testing program. The standardized guidelines for health effects, environmental effects, and chemical fate tests are found at 40 CFR parts 795 through 798.

Under section 4 of TSCA, testing of chemicals to develop data is required if the Administrator makes certain findings as described in TSCA section 4(a)(1) (A) or (B). In TSCA section 4 test rules, EPA specifies the individual test requirements. A generally formulated set of test procedures, known as TSCA test guidelines, are usually adopted as test requirements. These guidelines specify, when appropriate, tiered testing schemes which use short-term, less expensive tests to trigger subsequent, more complex tests or batteries of tests. (See, *e.g.*, 40 CFR 799.2500 and 3175.) These longer-term tests, such as cancer bioassays, are much more costly. Determinations of whether longer-term testing is necessary are made on an individual chemical basis.

Under TSCA section 5, EPA screens new chemical substances before manufacture is permitted to assess their potential to cause injury to human health or the environment. Using findings similar to those under TSCA section 4, if EPA finds that available information is insufficient to permit reasonable evaluation of the health and environmental effects of a new substance and, in the absence of such information, activities involving the substance may present an unreasonable risk, EPA may regulate activities involving the new substance pending development of sufficient information. In addition, EPA may regulate a new substance where the information is insufficient and the substance will or may be produced in substantial quantities and there is or may be significant or substantial human exposure to the chemical or the substance may reasonably be anticipated to enter the environment in substantial quantities. Such testing must be completed and evaluated to EPA's satisfaction before unrestricted commercial manufacture or import may occur. Tests are selected for these chemicals on the basis of the health or the environmental end point(s) identified during the assessment. Specific tests are frequently based on the TSCA Test Guidelines.

EPA invites comment on the suitability of the TSCA criteria in developing testing requirements and test methods for fuels and fuel additives. The legislative history of section 211(e) indicates that EPA should use relatively inexpensive but reliable test methods insofar as possible. H.R. Rept. No. 95–294, 95th Cong. 1st Sess. 309 (1977). Comments are particularly invited on the suitability of the tests used in the TSCA test rules as reliable test methods for use under section 211 and on the criteria that should apply to fuels and additives with a high production volume and a significant or substantial level of exposure.

E. Analysis of Section 211 Time Requirements for Submittal of Requisite Information

Section 211(e) requires that the "requisite information" be provided to EPA by each manufacturer within three years for existing fuels and fuel additives, and prior to registration for those not registered at the time the rule is promulgated. The legislative history for this provision indicates that all of the requirements are mandatory, as are the dates by which the required test information must be submitted by the manufacturer, subject to specific statutory exceptions. H.R. Rept. No. 95–294, 95th Cong., 1st Sess. 308 (1977).

However, the same report of the House Commerce Committee also indicates that the regulations are not intended to be "unduly burdensome". The Administrator is expected "to take costs into account in promulgating test requirements". H.R. Rept. No. 95–294, 95th Cong. 1st Sess. 309 (1977). The House Committee also expected EPA to utilize as far as possible the "[r]elatively inexpensive but reliable test methods" which are becoming "increasingly available". The "paramount interest" in protecting the public health requires test protocols which are "reasonably comprehensive" with respect to a number of health effects. *Ibid.*

As was discussed above, there appears to be some tension between the full potential scope of the testing requirement of section 211 and the Congressional goal that the implementing regulations not be "unduly burdensome". Special difficulties can arise if comprehensive testing of all existing fuels and fuel additives must be undertaken and completed within three years of the promulgation of the regulations. Such a fixed time schedule can be detrimental to conducting sound and adequate scientific studies. Long-term studies of health effects can often take longer than three years. Inhalation tests for carcinogenic effects may not show effects until after 30 months of exposure.[7] The additional time to set up the study and evaluate test results would effectively preclude submission of the results within three years. A narrow interpretation of this provision would limit testing to those tests that are possible to complete in three years rather than tests that may be more adequate and appropriate to determine potential public health and emission effects.

[7] "Health Assessment Document for Diesel Emissions;" Office of Research and Development; U.S. Environmental Protection Agency; Draft Report; May 25, 1990.

As discussed above, a three-year time period to complete any required testing would also strain the presently available laboratory facilities for conducting studies, particularly chronic studies such as inhalation studies. While more information on laboratory capability is needed, the present indications are that the limited test facilities available make it impractical to complete all testing of all fuels and fuel additives within three years.

It should be emphasized that at this point much remains to be learned about the extent of the additional testing that will be needed. Manufacturers may be exempted from further testing if adequate existing testing has already been conducted. The extent and adequacy of the existing testing will have to be determined. Cost-sharing by manufacturers is encouraged by the statute and this should reduce the amount of testing required for essentially the same substances. Furthermore, the legislative history encourages the use of relatively inexpensive but reliable test methods in so far as is possible.

Still, some additional testing is likely to be needed and these needs may surpass the capability of laboratories to complete within three years. EPA invites comment on appropriate ways to deal with the tension between the time needed for adequate testing and the limited laboratory capabilities on the one hand and the statutory time period for submitting requisite information on the other. The Agency is exploring several possible approaches and these are outlined below for discussion, along with related issues. Comments are invited on whether any of these approaches should be pursued, or on whether there are alternative approaches that should be considered.

1. Requisite Information

One approach, which appears sound and consistent with the Act, would be to view the requirement in section 211(e) that "requisite information" be submitted in three years as applying to the information and test results that EPA determines is needed for regulatory decision making and can be completed within the three years. Tests which cannot be completed within three years would need to be submitted as soon as possible after completion. The statutory text of section 211(e)(2) refers to the submission of "requisite information" required by regulation to implement the authority under section 211(b). The authority under section 211(b) that EPA is required to implement by section 211(e) states that EPA may require manufacturers to "conduct tests" to determine "potential public health effects," and to submit such other information "as is reasonable and necessary" to determine emission control and welfare effects. While section 211(e) no longer leaves EPA any discretion on whether to implement section 211(b), subsection (b) relies on EPA to exercise judgment in determining the testing needed to meet the statutory aims.

In the regulations implementing section 211(b), EPA would exercise its judgment to establish a fuel and fuel additives program that will meet the testing requirements of the Act. Under such an approach, producers of all existing fuels and fuel additives would have to submit certain information within three years of promulgation of the final regulation. This submission would contain the requisite information called for by the regulations including the results of screening tests and any other testing required and/or previously completed. Long-term tests would have to be submitted if required and if possible to complete them. Later submissions of completed studies would be permitted when it is not possible to submit adequate studies in that time period as discussed above. The obligation of manufacturers "to conduct tests" would be fulfilled by an undertaking to complete tests at a later time when it is not possible to finish the studies in the initial period. In addition, the tests would have to be completed and submitted to EPA by any specific date set by EPA in a notice to the manufacturers or published in the **Federal Register**. Submission of studies after the initial three-year period would also be permitted when adequate laboratory facilities are not available to conduct tests in that time period and is otherwise needed to meet the Congressional goals. EPA would consider identifying priorities for completing studies when there are insufficient testing facilities. Such an approach is also in accordance with section 211(b)(3) which provides that registrants will give assurances that they will submit additional information which reflects "changes in the information required" for registration.

Furthermore, as discussed above in connection with the methanol petition, the Agency also has the option to use its authority under TSCA in conjunction with section 211 to ensure that adequate testing is submitted. TSCA might be used to provide additional assurance that studies are completed and submitted on a timely basis especially when the tests take longer than the three years.

2. Three-Year Test Period

Another possibility is that the requirement in section 211(e) for submitting requisite information in three years for registered fuels should be read to apply only to the type of tests and information that can be completed and submitted in three years. Since Congress expected the requirement to be met in three years, Congress must have envisioned the use of tests that can be completed within this time period. In three years it is more feasible to complete literature searches, screening studies, and short-term studies as would be consistent with a tier testing approach. This type of information can also help the Agency make a preliminary assessment of the potential for public health, emission control and welfare effects. The information can guide the Agency's decision making and help to identify the need for further testing. If studies take longer than three years to complete, they would not be subject to the section 211(e) requirement. If additional testing is required, the Agency could use its authority under TSCA to require the submission of completed studies. Moreover, section 211(b)(2) and (3) can be viewed as authority under which the Agency can continue to require additional testing whenever needed even if the tests cannot be completed in the three year period identified in section 211(e).

3. Enforcement Discretion

While perhaps not prefered, another approach would recognize that while section 211 requires the submission of all requisite information within three years, the Agency has discretion in taking enforcement action. The Agency could issue guidelines that would recognize that, absent unusual circumstances, enforcement action would not be an appropriate priority when more time is needed to complete studies or when the limits on laboratory facilities delay the completion of studies. In these guidelines, the Agency could identify priorities based on public health factors for having tests completed. The aim would be to ensure early testing of substances with the greatest potential for extensive adverse effects. See *Heckler* v. *Chaney*, 470 U.S. 821 (1985), and *Cutler* v. *Hayes*, 818 F.2d 879 (D.C. Cir. 1987).

4. Temporary Registrations

Finally, there is one allied issue related to requirements for submission of the requisite information. When a particular fuel or fuel additive has not previously been registered, but it is

essentially the same as a registered fuel or additive for which testing is still ongoing, should a temporary registration ever be available for the new fuel or additive while the testing is being completed? Section 211(e) allows registered fuels and additives three years to submit the requisite information but it requires information regarding new fuels and additives prior to registration. A temporary registration in this circumstance would help guard against anti-competitive effects from the testing requirement when the substances pose substantially similar risks. Should temporary registrations be available in these or any other circumstances? What legal analyses would support their availability?

EPA seeks comments on all of these approaches and considerations in developing a plan to implement section 211. EPA is still in the process of developing its regulatory approach, and is interested in suggestions for any other approaches that should be considered.

F. Other Program Issues

1. Low Volume Consideration

As part of establishing protocols and determining potential risks, EPA is considering special provisions if the overall industry-wide annual production volume is less than a given threshold. Low production volumes usually result in low exposures and thus a diminished risk and need for comprehensive testing. Of course, the potency or toxicity of the compounds involved would also have to be considered. Comments are requested on this subject, including what exceptions would be appropriate and information to support any specific definition or exception suggested in the comment. EPA also requests comment on the applicability of the criteria used under TSCA for differentiating low volume, small business entities from larger entities.

2. Reporting Requirements

Any testing program that is developed will entail some degree of reporting. Exactly how much and in what form this information should be submitted needs to be established. Currently, for purposes of registration, marketers of fuels and additives must submit a fuel or additive notification form containing such information as the commercial name, chemical composition, percent by weight of each component, and purpose in use. This information is submitted to EPA on a standard form. With respect to the additional information that will need to be provided once testing regulations are promulgated, how shall this information be submitted? EPA does not intend to accept summaries of unpublished data; therefore, a detailed report would be necessary. For research that has been published in peer-reviewed literature, EPA believes a summary of the report will be adequate. Shall this information be submitted on standard forms or shall the format be the responsibility of the registrant? The Agency requests comments on the reporting detail necessary and on the type of format to use.

3. Evaluation of Test Results and Determination of Regulatory Action

Once adequate tests have been completed and the requisite information has been submitted to EPA, the Agency will need to assess the submissions to be sure adequate testing has been done and to determine whether any further testing or regulatory action is needed. One value of the testing program is the information it provides to the decision-making process. In addition, section 211(c) provides that, based on the information obtained under section 211(b), the Agency may control or prohibit fuels or fuel additives which "may reasonably be anticipated to endanger the public health or welfare" or impair emission control systems. Before taking any such action the Administrator must consider all relevant information available, including other means of achieving emission standards. The Administrator must also conduct a cost-benefit analysis comparing emission control systems that require the proposed control or prohibition with those that do not. In addition under section 211(c)(1)(C), the Agency cannot prohibit the fuel or additive if the restriction would lead to the use of any other fuel or additive which will endanger the public health or welfare to the same or greater degree. If, however, a more suitable substitute became or was available that was less dangerous to the public health or welfare, then action could be taken to restrict the more hazardous fuel/additive.

These determinations call for careful analysis and considerable information. The starting basis for judging what action is needed is the existence and degree of risk posed to the public health and welfare or emission control system. EPA invites comment on the appropriate process it should use to evaluate test results submitted under section 211(b) to determine the adequacy of the testing done, and the existence of a risk to the public health and welfare and the appropriate regulatory action to be taken in light of the constraints identified in section 211(c).

One possible alternative would be for EPA to evaluate the test results as an internal process as part of a determination whether further testing or regulatory action is necessary. Under this approach, if EPA decided a control or ban of the fuel or additive was necessary, it would commence rulemaking under section 211(c). If it decided no regulatory action was required, no formal announcement would be made and no formal public evaluation would be made by EPA of the test results submitted. The test results themselves would be public under section 211(b).

An alternative approach would be for EPA to establish a formal review process to evaluate the test results on a scientific basis, to determine the need for more tests, and announce publicly the extent to which the studies submitted are adequate and either show or do not show a potential public health risk or welfare effect and the degree of risk involved. Such a review process may or may not involve participation by outside scientific experts to advise EPA. Comment is invited on whether the Agency should establish a formal review process to evaluate the results of the testing done and the form any review should take, and the priorities for reviewing the test results for different categories of fuels and fuel additives.

4. Consequences of Failure to Submit Requisite Information

When the section 211(b) regulations are issued, EPA will need to ensure that such regulations are followed and the requisite information is submitted. The CAA contains specific provisions that need to be considered in ensuring compliance with section 211. Under section 211(d), the manufacturer can be assessed a $10,000 civil penalty for each and every day of failure to submit information required under subsection (b). In addition, under section 211(e), a new fuel or fuel additive is to provide the requisite information prior to registration.

Section 211(c) also provides for the issuance of regulations to restrict the use of fuels and fuel additives under certain conditions. Section 211(e) provides that the Agency's regulations "shall require" the submission of requisite information within the prescribed time frame, and the legislative history of section 211(e) suggests that if the requisite information is not submitted within three years for registered fuels and additives the Agency's regulations "should provide that such registration shall be deemed to be revoked". H.R. Rept. No. 95–294, 95th Cong., 1st Sess. 308 (1977). This provision can be viewed as authorizing

regulations that provide for revocation when the requisite information is not provided. If the regulations provide for revocation of the registration, EPA invites comment on the procedural safeguards that should be provided and on whether any administrative procedures should be afforded in advance before any registration for an existing fuel or additive is considered revoked.

Lastly, EPA invites comment on the consequences that should follow when the producer of an unregistered fuel or fuel additive submits all the test data and other requisite information required for registration but the information submitted indicates that the fuel or additive poses an unreasonable risk to the public health or welfare or to an emission control system. One possibility is to view section 211(b) as implicitly authorizing denial of registration when an unacceptable risk is shown. Another alternative is to view section 211(b) solely as an information-gathering provision with section 211(c) governing risk-based regulatory actions. Under this approach, the procedures and criteria of section 211(c) would have to be used if the Agency wished to deny registration based on nature of the risks shown by the tests or information submitted for registration. If section 211(c) is the basis for regulating a risk, may the Agency deny registration while a proposed regulation under section 211(c) is pending which would prohibit or limit the use of the fuel or additive?

V. Possible Program Protocols

A. Health Effects

The requirements and test protocols in the health effects program must be coordinated and structured to yield the information needed to determine whether or not the product may cause the health effects of concern. This includes a collection of currently available health effects and other information needed to assess risk as well as the generation of additional health effects data through testing when the presently available data is insufficient. The overall structure can follow a matrix or tiered format or a combination of both. A matrix would be a set of requirements of which all would need to be completed. Tiers would be set up as sequential levels of requirements where lower level would need to be completed prior to the higher levels.

The health effects program being considered by EPA combines features of both a matrix and tiered format. It would be set up with various tiers, and within some tiers there would be a set or matrix of tests and/or other requirements that would have to be completed. Fuels/additives would have to sequentially complete one or more tiers depending on the findings in each tier. This program would be formulated such that producers would only have to complete the tiers needed to gather the health effects information required for decision making, without having to subject each fuel/additive to a predetermined full array of tests that may be unnecessary and prohibitively costly. The health effects program being considered by EPA would consist of four tiers and a matrix or set of requirements within each tier. It would be designed to be as self-implementing as possible. Each of these is discussed below.

An explanation of the first tier requires the development of concepts involving "base fuels" (without direct additives), "base additives", and their potential health effects. First, to qualify as a base fuel/additive, there would have to be adequate existing health effects testing information to determine potential public health effects for regulatory decision making. (EPA specifically requests comment on whether adequate health effects testing information currently exists to qualify any particular fuel/additive as a "base fuel/additive" at this time and, if not, requests specific recommendations as to what additional information is needed for a candidate fuel/additive to qualify. As noted above, EPA has included in Docket No. A–90–07 a list of many of the published reports on existing fuels.) Second, EPA would seek to develop definitions/specifications for base fuels/additives such that any fuel/additive which would meet the specification for a given base fuel/additive would have essentially the same potential public health effects. Comments are invited on the criteria to be used. Thus, the first tier would involve the basic concept of comparing other fuels and additives seeking registration under section 211(b)(2) to the specifications EPA would develop for base fuels/additives. Existing fuels and additives could also seek to show by suitable information that they meet appropriate specifications for the base fuel/additive. Assuming base fuels additives are identified, the fuels/additives which conform to appropriate specifications of base fuels/additives would not be required to undergo further health effects testing unless new concerns arise in the future.

Thus, the basic tier 1 requirement would involve reporting of information including physico/chemical properties, production volume, concentration in use, and chemical composition and structure activity relationship, if needed, for each fuel or additive. Producers who believe that their fuels/additives would meet the specifications for one of the base fuels/additives would submit data and other analysis called for in the regulations providing justification for their view. No further health effects testing would be required for those fuels/additives found to meet the specifications for a base fuel/additive for such testing would be duplicative of adequate existing data. For those fuels/additives found not to fall within the specifications for a base fuel/additive, the presumption would be that EPA does not now have sufficient information for regulatory decision making and the fuel/additive would have to proceed to tier 2.

The goal of the tier 2 requirements would be the collection and submission of existing health effects information for the fuels/additives in question. It would require the producer to conduct a thorough literature search (public and in-house) for physico/chemical information, health effects studies, analyses, data and any other relevant information related to both the raw fuel/vapor, combustion products, and possibly atmospheric transformation products of the fuel/additive. This would cover information on all of the human health effects of interest, including but not limited to carcinogenicity, mutagenicity, teratogenicity as well as other acute, subchronic and chronic effects discussed previously in this notice. As part of the rulemaking EPA will need to more specifically define what health effect endpoints must be assessed beyond those specified in section 211(b)(2)(A). As part of this tier, a producer would make any request for a finding under section 211(e)(3)(C) that additional testing of the particular fuel/additive would be duplicative of adequate existing testing.

If health effects information is supplied to address all of the health effects endpoints identified in tier 2, the fuel/additive would not be required to enter tier 3. If relevant gaps exist in the health effects information submitted, then the fuel/additive would be required to enter tier 3. It is in tier 3 where producers would be required to conduct any needed short- or medium-term health effects tests. If the information from tiers 2 and 3 show a possible health effects concern and more definitive/extensive health effects testing has not been conducted, then the fuel/additive would be required to proceed to tier 4.

Tier 3 requirements would involve short- and medium-term health effects testing (*e.g.*, screening, acute and subchronic). Depending on the nature of the health effects information available from tier 2, the testing in tier 3 could be quite comprehensive or limited only to the gaps unfilled in tier 2. Tier 3 tests would likely include tests for physico/chemical properties, an Ames test, other genetic toxicity tests, screening inhalation studies as well as any acute and subchronic studies needed to determine potential public health effects. EPA requests comment on the need for oral and/or dermal vs. inhalation studies. Health effects covered include pulmonary toxicity, mutagenicity, carcinogenicity, and teratogenicity (or toxicological indicators thereof), and other health hazards, if appropriate. Of course, EPA must reserve the right to require specific or additional tests for each fuel/additive on a case-by-case basis. EPA would anticipate that these tests could be completed within the previously discussed three-year time period for submitting requisite information.

Individual fuels and additives would proceed into tier 4 only if the available tier 2 information or tier 3 test results were suggestive of an unresolved, yet potentially significant, health effects concern. Conceptually, tier 4 tests would be follow-up long-term tests for carcinogenicity, mutagenicity, and teratogenicity (and other endpoints), and could involve chronic inhalation and/or feeding studies among others. Tests would be structured to provide adequate toxicological information for making risk assessments. Again, raw, combustion, and possibly atmospheric transformation products could be included. EPA invites comments on the criteria that should be included in the guidelines and the process that should be used for making indiviudal determinations and developing appropriate procedures. EPA is considering adopting many of the tests of the TSCA Health Effects Testing Guidelines (40 CFR part 798) as guidelines under tiers 3 and 4 and asks for comment in this area.

Thus, tier 3 and 4 testing requirements would apply primarily to fuels and additives for which there is insufficient information or where the available information suggests that the substance may pose an unreasonable risk of injury to human health. For example, there are a number of current aftermarket fuel additives for which there is little publicly available health effects information, and future alternative fuels and their additives could also be subject to testing if adequate information does not exist based on tiers 1 and 2. Depending upon adequacy of existing tests and the specifications for base fuels/additives, this approach to health effects testing could substantially reduce the number of fuels/additives potentially subject to further testing.

The four tier program described above has several inherent advantages. First, it is a flexible approach which focuses on available information regarding health effects without requiring arbitrary testing. Second, the tiered approach insures that needed testing will be accomplished. Third, overall program cost is reduced under the tier approach. And, finally, the matrix format set up within each tier helps screen false negative and yield more confident results.

Section 211(b)(2)(A) clearly indicates that carcinogenicity, mutagenicity, and teratogenicity is to be assessed. However, EPA is allowed some judgment in determining what other health effects endpoints should be included. EPA asks comment on what other health effects endpoints should be included as mandatory, which should be applied on an individual basis, and through what procedure these determinations should be made. Overall, this program approach is intended to: (1) Provide an efficient means of identifying and summarizing the existing information on the health effects of fuels and additives, (2) identifying the information gaps, and (3) generating the new information needed for regulatory decision making.

B. Effects on Emission Control Systems

In addition to a program for health effects, the Act also requires the producers/manufacturers to provide the information that is "reasonable and necessary" to determine the emissions resulting from a fuel or fuel additive and the effect of such a fuel or fuel additive on the emission control performance of any vehicle or engine. The potential scope could include emission speciation for regulated and unregulated pollutants as well as effects on initial emission rates, emission deterioration rates, maintenance requirements, system longevity, and materials. Other concerns could include overall general effects on the vehicle/engine and emission control system performance. EPA invites comments on the extent to which information is needed on these effects.

EPA is contemplating a program design similar to that discussed previously for health effects and would again primarily utilize a tiered approach with a matrix of requirements in some tiers. The principles discussed earlier regarding base fuels/additives would also apply here. EPA does not anticipate a needlessly broad testing program, but would strive to limit any information reporting or testing to only those fuels/additives where information is needed for regulatory decision making or concerns exist over risks to the emission control system performance. The tiers envisioned for determining emission control system effects are discussed individually below.

As with tier 1 under the health effects program, this initial tier would involve the use of the base fuels/additives concept and a showing by the producers that their fuels/additives fall within the specifications of one of the base fuels/additives. Like under the health effects program, for a fuel or additive to be specified as a base fuel/additive, adequate existing information must be available on the emission control system effects of the fuel/additive for regulatory decision making. Assuming base fuels/additives are identified, fuels/additives which meet the specifications of a base fuel/additive would be exempt from testing unless new information needs arise. Those products which do not fall under one of the base fuels/additives would be required to enter tier 2, since the presumption would be that EPA does not now have sufficient information on those products for regulatory decision making.

As with the health effects program, EPA asks comment on whether adequate emission control system effects information currently exists to qualify any particular fuel/additive as a "base fuel/additive" at this time and, if not, requests recommendations as to what additional information is needed for a candidate fuel/additive to qualify.

Tier 2 would require the producer to submit whatever additional information is presently available on the emissions or emission control system impacts for the fuel/additive under consideration. This would include a literature search for public and in-house engineering studies, analyses, and data aimed at determining whether or not the fuel or additive showed any potential for adverse effects in the areas of concern discussed above. If the information submitted was sufficient no testing would be required. If, however, the available data was insufficient, or the fuel or additive showed potential for causing various undesirable effects on emissions, emission control system performance, or the vehicle/engine in general, then the fuel/additive would have to enter tier 3.

Requirements and tests under tier 3 would be focused on assessing specific concerns raised in tier 2, or just on supplying the information lacking from the tier 2 requirement. This tier could involve any combination or form of vehicle/engine tests to provide the needed information, but EPA would expect it to be completed within the aforementioned three-year time period for submitting requisite information.

EPA invites comment on how this program should be implemented and what testing and other information should be considered reasonable and necessary. EPA also invites comments on what specific tests are appropriate and should be included.

C. Determination of Welfare Impacts

Under section 211(e), the Agency is to issue regulations that will implement its authority regarding the assessment of welfare effects. CAA subsection 211(b)(2)(B) states that the Administrator may require producers to furnish information that is "reasonable and necessary" to determine the extent to which emissions of fuels and additives affect the public health or welfare. The welfare effects potentially include all aspects of ecology. This assessment could take into consideration the emissions' residence time in the air, the fate of the pollutant, and what reactions occur with other pollutants in the air, including atmospheric transformation products/byproducts and deposition effects.

The Agency is considering using a tiered approach like that discussed above in determining welfare effects. Fuels/additives to be registered under section 211(b)(2) would be compared with specifications EPA would develop for "base fuels/additives." Again, EPA requests comment on whether adequate reasonable and necessary information exists on welfare effects to qualify any particular fuel/additive as a base fuel/additive at this time and, if not, requests specific recommendations as to what additional information is needed for a candidate fuel/additive to qualify. Producers would be required to submit information to show that their fuel/additive meets the specifications defined for base fuels/additives. If no fuels/additives qualifying as "base fuels/additives" are determined or if this information did not show the fuel/additive to be essentially the same as a base fuel/additive, then further reporting requirements would be necessary. Like tier 2 discussed earlier, this would involve a thorough literature search for existing information and data on known welfare effects. In submitting information, producers could be required to report the known welfare effects of the raw, combustion, and atmospheric transformation products of fuels and additives. Such information could be obtained from studies, literature searches, reports, summaries of existing data and information, and other readily available discussion concerning the assessment of welfare effects associated with the use/combustion of fuels and fuel/additives. This information could then be used to determine whether or not the product poses a significant hazard to welfare or the environment. If a potentially serious welfare threat exists, based on criteria established in this rulemaking for making such a determination, then further studies, which could be included as tier 3 and/or 4, may be required or appropriate regulatory action taken. EPA requests comments on this approach and on the extent to which the welfare effects should be assessed through the submission of information or through specific testing requirements. The Agency welcomes suggestions regarding other appropriate means of assessing welfare effects. EPA also asks comment on the applicability of the TSCA Environmental Effects Testing Guidelines (40 CFR part 797) to this requirement.

VI. Statutory Authority

Authority for the actions proposed in this notice is granted to EPA by sections 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521(a), 7525, and 7601(a); Public Law 95–95).

VII. Administrative Designation and Regulatory Analysis

Executive Order 12291 states that an Agency must judge if a rulemaking would be "major". A rulemaking is considered "major" if it will have an annual effect on the economy of $100 million or more, if there will be a major cost increase for consumers, individual industries, federal, state, or local government agencies, or other geographic regions, and if there will be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. At this juncture, it has not been determined if this action represents a major rulemaking.

VIII. Public Participation

To aid in preparing the proposed rule, EPA encourages full public participation in this aciton. Comments are requested on all aspects of the suggested program and from all interested parties. If possible, comments should be accompanied by full supporting data (including production volume data and complete chemical composition data) and a detailed analysis. Parties are encouraged to submit information which may not be detailed in the current registration data base as EPA will be using what information is present in supporting analyses for the NPRM. Due to the time elapsed, EPA is not considering comments submitted to Docket ORD–78–01 for the 1978 ANPRM unless they are resubmitted to Docket A–90–07 for this current rulemaking. Comments containing proprietary information should be sent to the contact person listed above; however, a non-confidential version should be sent to the public docket if the information is intended to be considered by EPA in development of the NPRM. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claims of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

EPA desires specific comments on the following additional issues regarding this rule:

1. Health Effects

a. Should EPA develop test guidelines or, more specifically, test plans for purposes of determining health effects?

b. In the event that EPA establishes more than one testing plan, should the test plan selected receive prior EPA approval?

c. How should the test plan be organized, tier or matrix?

d. For the four tiers suggested in this notice, what should the requirements be?

e. What other health effects, besides carcinogenicity, mutagenicity, and teratogenicity, should be considered?

f. What tests should be required?

g. What constitutes an acceptable test?

h. What should be the criteria for determining positive and negative test results?

i. How should the pollutants be administered to the host being tested (route of exposure)?

j. What is the most appropriate grouping scheme for fuels and additives and what criteria should be used to designate fuels and additives into proper categories?

k. How should representative fuels or additives from within each group be selected?

1. What criteria should be used to excuse a fuel or additive from additional testing based on available information?

m. How should fuel and additive manufacturers submit test data?

n. On what basis or level of risk should a control be established for a fuel or additive?

o. How could existing guidelines (TSCA, FIFRA, OECD, EPA) be applied in this rulemaking?

2. Emissions Effects Testing

a. Should EPA develop test guidelines or, more specifically, specify test plans for purposes of determining emission control system effects?

b. In the event that EPA establishes more than one testing plan, should the test plan selected for use by the producer receive prior EPA approval?

c. How should a program be structured for assessing the effects of a fuel or additive on emission control system performance?

d. What tests should be included?

e. What constitutes an acceptable test?

f. What criteria should be used to decide if the test is positive or negative?

h. Are there any existing test plans or procedures for assessing the performance of emission control systems that should be used in this program?

i. What procedures should be used for sampling unregulated emissions?

j. What portion of the exhaust should be collected and measured (*i.e.*, whole exhaust, fractionated exhaust, irradiated whole or fractionated samples)?

k. What driving cycles should be part of a testing program?

l. How many miles should an engine/vehicle be driven for each tier of testing?

m. Should evaporative and refueling emissions be sampled?

n. Should running losses be sampled?

o. How should manufacturers submit test data?

p. On what basis shall fuels and additives be controlled or banned?

3. Other Matters

a. What welfare effects should be assessed and how should this be accomplished?

b. Besides grouping fuels and additives that are essentially the same, what other means are there for minimizing duplicative testing?

c. What measures should be implemented to allow for cost- and/or burden-sharing between manufacturers?

d. What criteria should be used to determine if a fuel or additive manufacturer is a small business?

e. If volume and sales levels are used to define small business, what levels should these be set at?

f. Should a manufacturer be excused from health effects and emission testing where it can demonstrate that the fuel or fuel additive in question will not cause an adverse health effect or affect emission control device performance? If so, what should EPA require from the manufacturer to make such a showing? Should EPA develop screening test requirements as part of this rulemaking as outliend earlier?

g. What factors should be included in any enforcement program?

List of Subjects in 40 CFR Part 79

Administrative practices and procedures, Diesel, Diesel additives, Emission control systems, Fuel, Fuel additives, Gasoline, Gasoline additives Health and welfare effects, Motor vehicle pollution, Penalties.

Dated: August 1, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90-18452 Filed 8-6-90; 8:45 am]

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Vol. 55, No. 152

Tuesday, August 7, 1990

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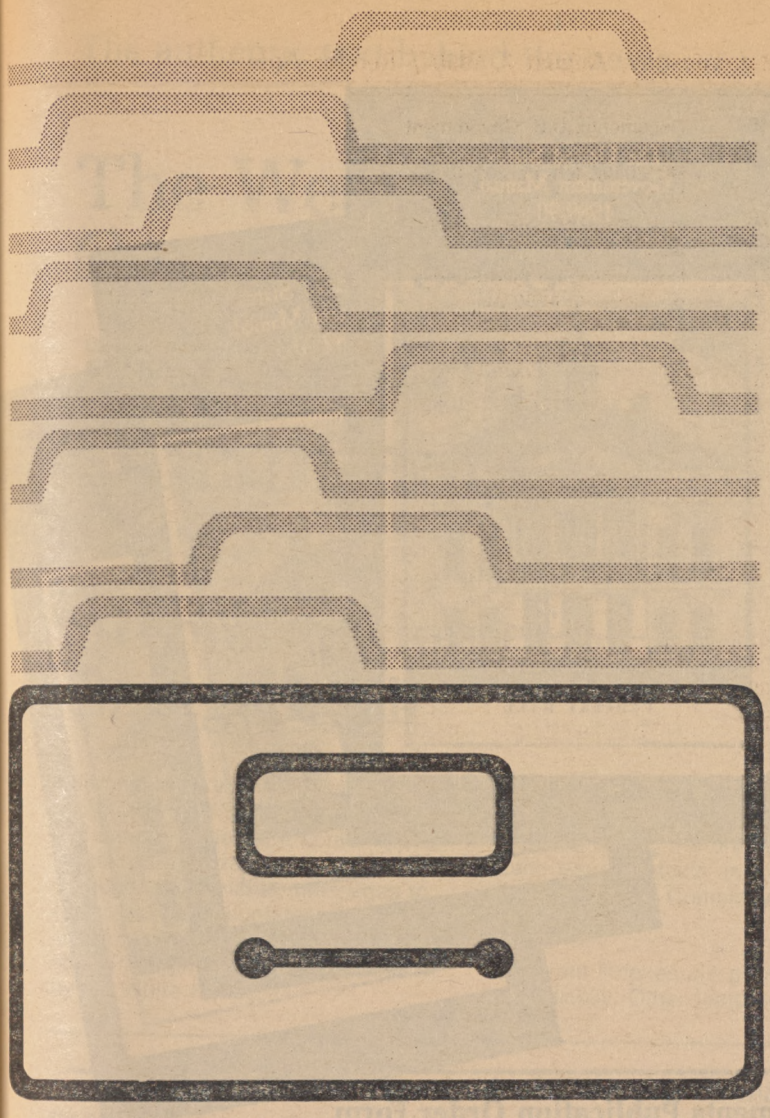

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in the Code of Federal Regulations (CFR)

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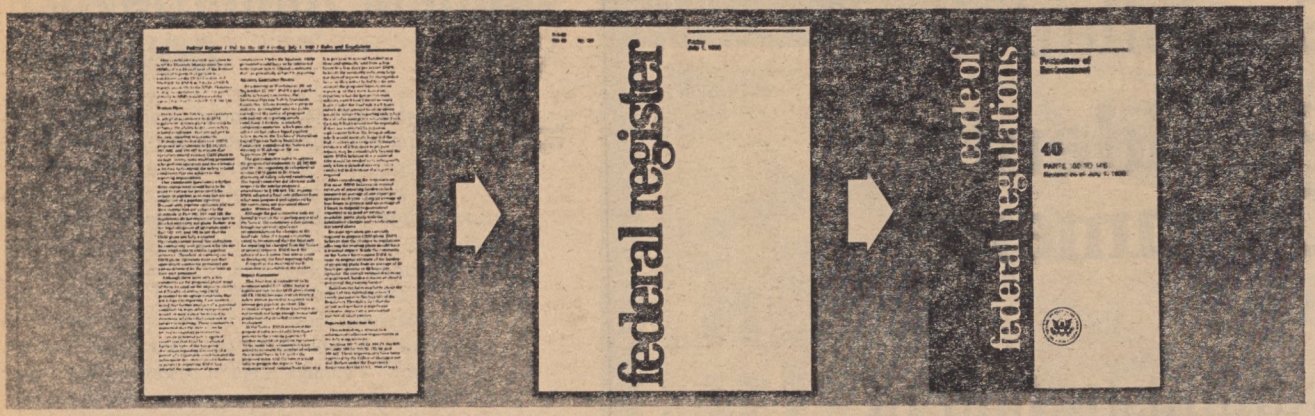

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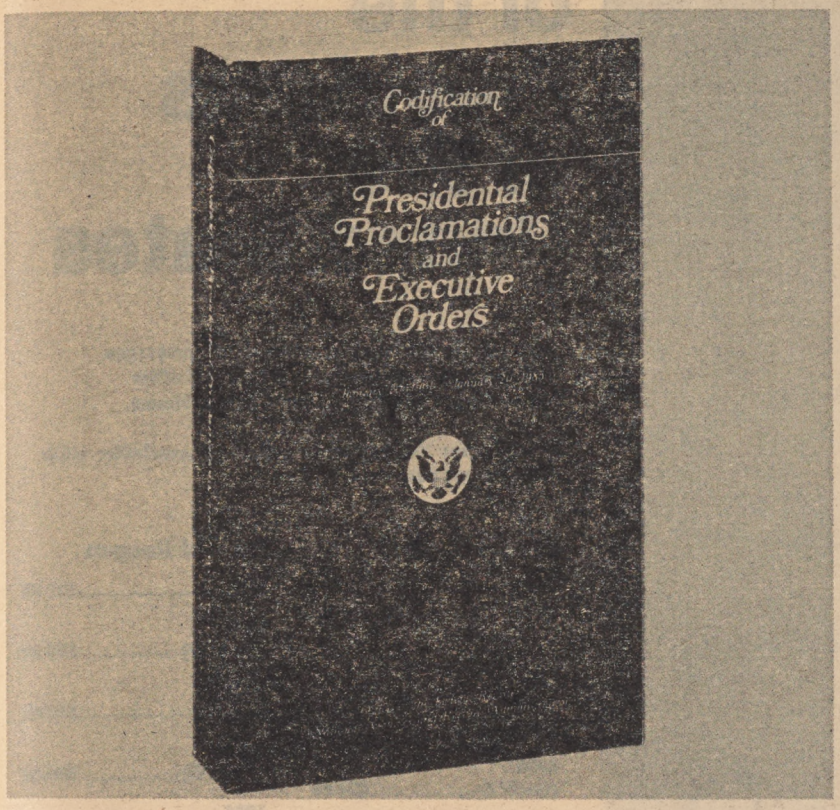

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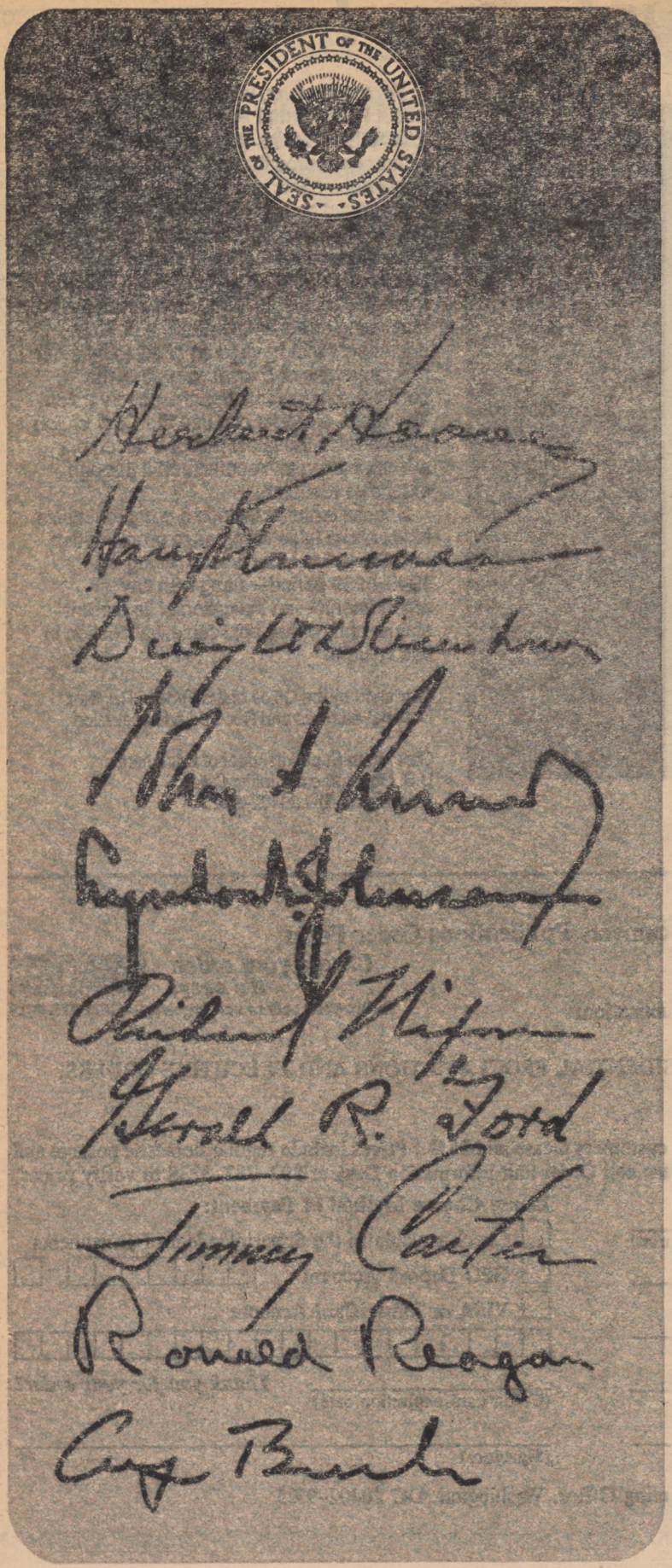

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