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

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WHO: The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 23, at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children (WIC): Nondiscretionary Benefit-Related Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements nondiscretionary benefit-related provisions of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147), enacted on November 10, 1989. The statute contains two provisions which can be implemented without the exercise of Departmental discretion and which would extend income eligibility for the WIC Program. First, this rule implements the provision which gives State agencies the option to exclude military housing allowances received by personnel who live off base from consideration when determining the income eligibility of applicants for the program. Second, it implements the portion of the statute which requires that recipients of food stamps, or assistance under Aid to Families with Dependent Children (AFDC) or Medicaid, be considered adjunctively (i.e., automatically) income-eligible for WIC, provided that AFDC and Medicaid recipients have been determined fully eligible for one of these programs, as opposed to "presumptively" (i.e., provisionally) eligible pending completion of the eligibility determination process.

EFFECTIVE DATES: February 1, 1990. State agencies may implement the provisions of this rule beginning February 1, 1990, but shall implement adjunct eligibility as mandated by § 246.7(c)(2)(vii) not later than June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Ronald J. Vogel, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 1017, Alexandria, Virginia 22302, (703) 756–3746.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been reviewed under Executive Order 12291 and has been determined to be nonmajor. The rule will not have an annual effect on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Further, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has certified that this final rule will not have a significant impact on a substantial number of small entities.

This rulemaking does not contain any reporting and recordkeeping requirements subject to review by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This final rule implements certain provisions of section 17(d)(2) of the Child Nutrition Act of 1966 (CNA) as amended by section 123(a)(2) of Public Law 101–147 which expand income eligibility in the WIC Program. These provsions render additional persons eligible for WIC, and participation in the program may improve pregnancy outcomes and the health and nutritional status of program participants. Furthermore, these provisions serve the interest shared by the President and Congress in greater coordination among programs which promote positive pregnancy outcomes. For these reasons, and because this is an interpretive rule implementing certain nondiscretionary provisions of Public Law 101–147, the Administrator of the Food and Nutrition Service has determined that prior notice and comment and a 30-day post-publication waiting period are not required in accordance with 5 U.S.C. 553(b)(3)(A) and 553(d)(2).

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Background

Section 123(a)(2) of Public Law 101–147, enacted November 10, 1989, contains two amendments to section 17(d)(2) of the CNA which can be implemented without the exercise of Departmental discretion, and which extend WIC income eligibility to persons whose incomes exceed the previous statutory limit. At the State agency's option, cash housing allowances received by military personnel living in off-base housing can be excluded from consideration as income for purposes of determining income eligibility for the WIC Program. The new legislation also establishes "adjunct," or automatic, income eligibility for recipients of food stamps, AFDC, and Medicaid, as well as members of families which include an AFDC recipient or a pregnant woman or infant receiving Medicaid. This provision not only improves coordination among the programs, but also extends the bounds of income eligibility for certain categories of WIC applicants. However, except with respect to food stamp recipients and persons who have been determined fully eligible for AFDC or Medicaid, its implementation requires that the Department resolve major issues presented by the legislation and practical aspects of implementation. The resolution process entails research and coordination with the Department of Health and Human Services. At this time the provision can be implemented only with regard to recipients of food stamps (i.e., members of a food stamp "household") and to recipients of AFDC and Medicaid whose eligibility for either of those two programs has been fully established. The Department intends to resolve issues relative to implementation of the remaining

elements of adjunct eligibility as soon as possible and to implement these elements in an interim rulemaking which affords an opportunity for public comment.

1. *State agency option to exclude military housing allowances from consideration as income for purposes of determining WIC income eligibility (Section 246.7(c)(2)(iv)).* WIC Program regulations have required consideration of all cash income received by applicants, including military housing allowances and excluding only cash payments prohibited by Federal statute from being considered for purposes of establishing WIC income eligibility. However, section 17(d)(2)(B) of the CNA, as amended by section 123(a)(2) of Public Law 101–147, provides that, "for purposes of establishing income eligibility * * *, any State agency may choose to exclude from income any basic allowance for quarters received by military service personnel residing off military installations." State agencies which choose to apply this income exclusion must implement it uniformly with respect to all applicants from military families and may commence implementation February 1, 1990. A new § 246.7(c)(2)(iv) is added to the regulations to implement this option.

2. *"Adjunct," or automatic, WIC income eligibility for the Food Stamp Program, AFDC, and Medicaid recipients (Section 246.7(c)(2)(vii)).* Section 123(a)(2) of Public Law 101–147 amends section 17(d)(2)(A) of the CNA to mandate that persons who receive food stamps, are members of families receiving assistance under Aid to Families with Dependent Children (AFDC), receive Medicaid, or are members of families including a pregnant woman or infant who receives Medicaid be considered to be income-eligible for WIC. Prior to this legislation, § 246.7(c)(2)(v) of the regulations provided that participation in another program could be used, at the State agency's option, as a means of establishing WIC income eligibility only if "those programs have income eligibility guidelines at or below the State agency's [WIC] Program income guidelines." The new legislative mandate extends WIC income eligibility to pregnant women participating in Medicaid in States with Medicaid income eligibility guidelines approaching 185 percent of Federal Poverty Income Guidelines, who had not previously been eligible because the two programs determine family size in different ways. The new provision also extends income eligibility to recipients of food stamps, AFDC, and Medicaid in any State with WIC income eligibility limits that are lower than the limits in these programs.

Departmental discretion must be exercised in order to resolve several key issues before the adjunct eligibility mandate of Public Law 101–147 can be fully implemented. First, decisions must be made with regard to how to define "family" in order to determine who are members of Medicaid and AFDC "families" and are, therefore, adjunctively income-eligible for WIC. Second, the Department must resolve practical issues relative to implementation of adjunct WIC income eligibility for persons who are "presumptively" eligible for Medicaid or AFDC. Persons in this category participate in the programs provisionally, pending completion of the eligibility determination process. They "receive" benefits under these programs during their temporary participation and must, therefore, be granted adjunct income eligibility in WIC during this period. It is equally apparent that, in the event they prove ineligible for these programs and consequently cease to "receive" benefits under them, their adjunct income eligibility for WIC comes to an end, and their income eligibility for WIC must be independently determined by WIC authorities. However, the Department cannot implement this aspect of adjunct income eligibility until several practical issues have been resolved. For example, the Department must research benefit issuance systems in AFDC and Medicaid in order to determine how WIC State agencies will be required to become aware of participants who enter WIC based on adjunct income eligibility derived from presumptive eligibility for either gateway program, but who prove not to be eligible for the gateway program. The Department must exercise some discretion to resolve this and numerous other practical implementation issues.

The Department is currently researching these issues and plans to implement the remaining aspects of adjunct eligibility in an interim rulemaking subject to public comment in the near future. Section 123(f)(1) of Public Law 101–147 mandates that this provision be fully implemented through the rulemaking process not later than July 1, 1990.

It should be remembered that persons who are adjunctively income-eligible for WIC must also be categorically eligible for the program and meet the nutritional risk eligibility criterion in order to be eligible for the program, and that they will be enrolled only if caseload slots are available in the area where they apply. If the local agency at which they apply is at maximum caseload, such persons can be placed on a waiting list and served in accordance with the participant priority system as slots become available.

This final rulemaking mandates adjunctive income eligibility in WIC for food stamp recipients and for AFDC and Medicaid recipients who are fully, as opposed to presumptively, eligible for these two gateway programs. The Department believes that these newly income-eligible persons should be able to enter the program without delay if otherwise eligible and caseload slots are available. However, the Department also recognizes that implementation at the WIC clinic level will require transmittal of the necessary information from WIC State agencies to local agencies, and from there to clinics. Implementation will also require retraining of WIC intake staff and increased coordination with Food Stamp Program, AFDC, and Medicaid staffs. Therefore, this rulemaking requires that the aspects of adjunct income eligibility mandated by this rulemaking be fully implemented in all States not later than June 1, 1990. State agencies may begin implementation immediately upon publication of this final rule. Adjunctive eligibility is established in § 246.7(c)(2)(vii) of this rulemaking, and conforming amendments appear in §§ 246.7(c)(1) and 246.7(c)(2)(iii).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

Authority: Sec. 123, Pub. L. 101–147, 103 Stat. 894; Sec. 645, Pub. L. 100–460, 102 Stat. 2229; secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); secs. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); secs. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S. C. 1786); sec. 3, Pub. L. 96–499, 94 Stat. 2599; sec. 203, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In § 246.7:

a. At the end of introductory paragraph (c)(1), a new sentence is added;

b. In paragraph (c)(2)(iii), the last sentence is revised;

c. Paragraphs (c)(2)(iv)–(c)(2)(vii) are redesignated as paragraphs (c)(2)(v), (c)(2)(vi), (c)(2)(viii) and (c)(2)(ix), respectively;

d. New paragraphs (c)(2)(iv) and (c)(2)(vii) are added; and

(e) Newly redesignated paragraph (c)(2)(vi) is revised.

The additions and revisions read as follows:

§ 246.7 Certification of participants.

* * * * *

(c) * * *

(1) * * * Program applicants who meet the requirements established by paragraph (c)(2)(vii) of this section shall not be subject to the income limits established by State agencies under this paragraph.

* * * * *

(2) * * *

(iii) * * * The State agency shall ensure, however, that the State or local agency's definition of income does not count the value of in-kind housing and other in-kind benefits and payments or benefits listed in paragraph (c)(2)(v) of this section as income for Program purposes, and that families with gross income, as defined in paragraph (c)(2)(ii) of this section, in excess of 185 percent of the Federal guidelines specified under paragraph (c)(1) of this section are not rendered eligible for Program benefit, except that persons who meet the requirements of paragraph (c)(2)(vii) of this section shall not be subject to limitations established under this paragraph.

(iv) In determining income eligibility, the State agency may exclude from consideration as income any basic allowance for quarters received by military services personnel residing off military installations. State agencies which choose to exercise this option shall implement it uniformly with respect to all Program applicants from military families.

* * * * *

(vi) A State or local agency may require verification of information which it determines necessary to confirm income eligibility for Program benefits.

(vii) The State agency shall accept as income-eligible for the Program all applicants who document that they are either recipients of food stamps under the Food Stamp Act of 1977 or recipients of Aid to Families with Dependent Children established under Part A of Title IV of the Social Security Act or medical assistance (i.e., Medicaid) under Title XIX of the Social Security Act who can document that they have been determined fully eligible for one of these two programs, as opposed to being presumptively eligible pending completion of the eligibility determination process. Such persons shall not be subject to income limits established under paragraph (c)(1) of this section. The State agency may accept, as evidence of income within Program guidelines, documentation of the applicant's participation in State-administered programs not specified in this paragraph that routinely require documentation of income, provided that those programs have income eligibility guidelines at or below the State agency's Program income guidelines.

* * * * *

Dated: January 26, 1990.

Betty Jo Nelsen,

Administrator, Food and Nutrition Service.

[FR Doc. 90–2300 Filed 1–31–90; 8:45 am]

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Rural Electrification Administration

7 CFR Part 1770

Accounting Requirements for REA Telephone Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR XVII by adding a new part, part 1770, Accounting Requirements for REA Telephone Borrowers, and a new subpart, subpart B, Uniform System of Accounts. Current REA policy on this subject is set forth in REA Bulletin 461–1, Accounting System Requirements for Telephone Borrowers of the Rural Electrification Administration. In addition to codifying its policies and procedures, revisions are being proposed to the existing system that will coincide with the revision of the Federal Communications Commission Uniform System of Accounts for Telecommunications Companies as set forth in 47 CFR part 32 (part 32) of the Commission's Rules and Regulations. Upon publication of this final rule, REA Bulletin 461–1 will be rescinded.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Davis, Director, Borrower Accounting Division, Rural Electrification Administration, Room 2231, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9450.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR chapter XVII by adding a new part, part 1770, Accounting Requirements for REA Telephone Borrowers, and a new subpart, subpart B, Uniform System of Accounts. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with the foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and, therefore, does not require an environmental impact statement or an environmental assessment. The recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The OMB approval number is 0572–0003. Public reporting burden for this collection of information is estimated to average 260 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0572–0003), Washington, DC 20503. The programs listed in the Catalog of Federal Domestic Assistance that are impacted are 10.851—Rural Telephone Loans and Loan Guarantees and 10.852 Rural Telephone Bank Loans. For reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, (50 FR 47034, November 14,

1985) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

In order to facilitate the effective and economical operation of a business enterprise, adequate and reliable financial records must be maintained. Accounting records must provide a clear and accurate picture of the enterprise's current economic condition from which management can make informed decisions in charting the company's future. A telecommunications carrier, because of the rate regulated environment in which it operates, possesses and even greater need for financial information that is accurate, complete, and comparable with that generated by other carriers. For this reason, the Federal Communications Commission (FCC) prescribes a Uniform System of Accounts for the telecommunications industry.

REA, in representing the federal government as mortgagee and in furthering the objectives of the Rural Electrification Act, has a special concern that adequate records are maintained. Due to the cooperative organization of many of our borrowers and the provisions included in REA's mortgage agreements and lien accommodations, REA has augmented the FCC Uniform System of Accounts with supplementary accounts that will provide the financial information necessary to operate a rural telecommunications enterprise.

The accounting system in effect prior to January 1, 1988 (prescribed in parts 31 and 33 of the FCC Rules and Regulations) was developed at a time when a rigid institutionalized regulatory environment was expected to continue indefinitely. With the introduction of competition and a variety of new products and services in the last decade, the previous systems of accounts became inadequate to handle the needs of the telecommunications carrier. As a result, the FCC adopted a revised Uniform System of Accounts as set forth in part 32 of their Rules and Regulations. Effective January 1, 1988, part 32 was implemented in its entirety and parts 31 and 33 were rescinded.

This evolution has also necessitated a change in the accounting requirements and supplemental accounts prescribed by REA. The provisions and requirements detailed in part 1770, subpart B, coincide with those prescribed in part 32.

On November 29, 1988, at 54 FR 47959 REA published a Notice of Proposed Rulemaking in this proceeding in which we proposed to amend 7 CFR chapter XVII by adding a new part, part 1770, Accounting Requirements for REA Telephone Borrowers, and a new subpart, subpart B, Uniform System of Accounts. Specific proposals included REA's formal adoption of the FCC Uniform System of Accounts as set forth in Part 32 of the Commission's Rules and Regulation. In addition, REA prescribed supplementary accounts for, among other things, long-term debt financed by REA, the Rural Telephone Bank (RTB), the Federal Financing Bank, the Bank for Cooperatives, and the Rural Telephone Finance Cooperative; for investments in Class B and Class C RTB Stock; and for members' equity certificates and patronage capital.

REA also detailed its proposed requirements for adopting the accrual basis of accounting and for establishing and maintaining continuing property records.

Summary of Comments

In our Notice of Proposed Rulemaking, we invited interested parties to file comments on or before January 30, 1989.

Comments were received from two certified public accounting firms. Both firms recommended that REA borrowers be permitted to establish their own specific subaccounts within the primary account classifications required in §§ 1770.15 and 1770.16, provided that the integrity of the accounts and account descriptions were maintained.

One firm also commented on the requirements for continuing property records (CPRs) as set forth in § 1770.14, stating that the information required in this subpart was far more detailed than that currently being maintained by its clients. The firm also requested a clarification of the term "location" for purposes of establishing CPRs.

Discussion

When prescribing the specific subaccounts detailed in §§ 1770.15 and 1770.16, REA's intent was to provide uniform accounting for the transactions that are unique to the REA borrowers, within the constraints of the FCC Uniform System of Accounts (part 32). Our intent was not to restrict or limit flexibility in designing individual accounting systems. We have, therefore, decided to amend § 1170.12 to permit borrowers to establish their own specific subaccount numbers within the primary accounts prescribed by the FCC. The integrity of the accounts and the account descriptions must, however, conform to those detailed in §§ 1770.15 and 1770.16. REA borrowers electing to develop their own subaccounts must be aware that the REA Form 479, Financial and Statistical Report for Telephone Borrowers, and the instructions for preparing that form, Telephone Operations Manual 1800, are based upon the specific subaccounts detailed in §§ 1770.15 and 1770.16. By permitting borrowers to establish their own subaccounts, REA is not relieving them of their responsibility to report these items correctly on the Form 479, nor are we permitting borrowers to make individual changes to the Form 479 to conform to their subaccounts.

With regard to the second comment concerning the detail required to be maintained for CPRs under § 1770.14, Continuing Property Records, REA has adopted the requirements set forth by the FCC in part 32. We are not expanding those requirements in any manner, and we do not, therefore, find it necessary or prudent to change the requirements set forth in § 1770.14. Additionally, we do not consider it prudent to expand the definition of "location" as set forth in part 32. To do so might impose a level of detail not intended by either the FCC or REA. Therefore, we shall continue to utilize the FCC's requirements for the establishment and maintenance of CPRs which requires that a description of property record units include the specific location of the property within each accounting area in such a manner so that it can be readily spot-checked for proof of physical existence.

List of Subjects in 7 CFR Part 1770

Accounting.

In view of the above, REA adds new part, 1770, Accounting Requirements for REA Telephone Borrowers, and subpart, subpart B, Uniform System of Accounts, to 7 CFR chapter XVII to read as follows:

PART 1770—ACCOUNTING REQUIREMENTS FOR REA TELEPHONE BORROWERS

Subpart A—General Provisions

Sec.
1770.1–1770.9 [Reserved]

Subpart B—Uniform System of Accounts

1770.10 General.
1770.11 Accounting system requirements.
1770.12 Supplementary account.
1770.13 Accounting requirements.
1770.14 Continuing property records.
1770.15 Supplementary accounts required of all borrowers.
1770.16 Supplementary accounts required of nonprofit organizations.
1770.17–1770.25 [Reserved].

Subpart C—Accounting Interpretations

1770.26–1770.45 [Reserved]

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

Subpart A—General Provisions

§ 1770.1–1770.9 [Reserved]

Subpart B—Uniform System of Accounts

§ 1770.10 General.

This subpart implements provisions of the standard REA loan documents with respect to the accounting system accounts to be maintained by telecommunications borrowers of the Rural Electrification Administration.

§ 1770.11 Accounting system requirements.

(a) Each REA borrower subject to the jurisdiction of the Federal Communications Commission (FCC) or a State regulatory body shall maintain its accounts and records in accordance with the rules and regulations prescribed by that regulatory body.

(b) Each REA borrower not subject to regulatory control as specified in § 1770.11(a) shall maintain its accounts and records in accordance with the FCC Uniform System of Accounts as set forth in part 32 of the Commission's Rules and Regulations.

(1) REA borrowers having annual revenues derived from regulated telecommunications operations of $100,000,000 or more shall maintain the accounts prescribed in part 32 for Class A companies.

(2) REA borrowers having annual revenues derived from regulated telecommunications operations of less than $100,000,000 shall maintain the accounts prescribed in part 32 for Class B companies.

(3) REA borrowers maintaining the accounts prescribed for Class B companies may adopt the Class A accounts if they desire more detailed and sophisticated accounting records.

§ 1770.12 Supplementary accounts.

(a) All borrowers shall maintain the supplementary accounts set forth in § 1770.15. These accounts conform in number and title with accounts prescribed in the FCC Uniform System of Accounts. In those instances in which a State regulatory body having jurisdiction over an REA borrower has prescribed a system of accounts differing from that of the FCC, the account titles prescribed by REA in § 1770.15 shall remain unchanged; however, the supplementary account numbers shall be changed to conform with the State's accounting system.

(b) In addition to the accounts set forth in § 1770.15, cooperative or other nonprofit borrowers shall maintain the supplementary accounts set forth in § 1770.16.

(c) Borrowers are permitted to deviate from the specific subaccount numbers detailed in §§ 1770.15 and 1770.16 provided that the primary account numbers and account descriptions conform with those prescribed.

(Approved by the Office of Management and Budget under control number 0572–0003).

§ 1770.13 Accounting requirements.

(a) Each borrower shall maintain its books of accounts on the accrual basis of accounting. All transactions shall be recorded in the period in which they occur and reconciled monthly. The books of accounts shall be closed at the end of each fiscal year and financial statements shall be prepared for the period and audited in accordance with the provisions of 7 CFR part 1789, REA Policy on Audits of Electric and Telephone Borrowers.

(b) All books of accounts, records, and memoranda shall be maintained in such a manner as to fully support the journal entries to which they relate. The books and records referred to herein shall include records of a nontechnical nature such as minute books, stock and membership records, reports, correspondence, and memoranda.

(c) Interpretations of Federal or State requirements shall be referred to the applicable commission exercising jurisdiction over the borrower.

(d) Interpretations of REA accounting requirements shall be referred to the appropriate Telephone Area office of REA.

§ 1770.14 Continuing property records.

Each borrower shall maintain continuing property records which detail the date of placement, location, description of property, and the original cost of the property record units. The continuing property record and other underlying records of construction costs shall be maintained so that upon retirement of one or more retirement units or of minor items without replacement when not included in the costs of retirement units, the actual cost of the plant retired can be determined.

§ 1770.15 Supplementary accounts required of all borrowers.

Accounts prescribed in the Stockholders' Equity and Patronage Capital section shall be maintained by stock companies and cooperatives as appropriate.

Class of company		Account title
Account No.		
A	B	
		Current Assets
1130.1	1120.11	Cash—General Fund.
1130.2	1120.12	Cash—Construction Fund Trustee.
1130.3	1120.13	Cash—Transfer of Funds.
	1120.21	Special Cash Deposits.
1150.1	1120.31	Petty Cash Fund.
1150.2	1120.32	Change Fund.
		Supplies
1220.1	1220.1	Materials and Supplies.
1220.2	1220.2	Property Held for Sale or Lease.
1220.3	1220.3	Exempt Materials—Clearing.
		Prepayments
	1280.1	Prepaid Rents.
	1280.2	Prepaid Taxes.
	1280.3	Prepaid Insurance.
	1280.4	Prepaid Directory Expenses.
	1280.5	Other Prepayments.
		Investments
1402.1	1402.1	Investments in Nonaffiliated Companies—Class B RTB Stock.
1402.11	1402.11	Investments in Nonaffiliated Companies—Class B RTB Stock—Cr.

Class of company		Account title
Account No.		
A	B	
1402.2	1402.2	Investments in Nonaffiliated Companies—Class C RTB Stock.
1402.3	1402.3	Other Investments in Nonaffiliated Companies.
		Property, Plant, and Equipment
2001.1	2001.1	Telecommunications Plant in Service—Classified.
2001.2	2001.2	Telecommunications Plant in Service—Unclassified.
2003.1	2003.1	Telecommunications Plant Under Construction—Short Term—Contract.
2003.2	2003.2	Telecommunications Plant Under Construction—Short Term—Force Account.
2003.3	2003.3	Telecommunications Plant Under Construction—Short Term—Work Orders.
2004.1	2004.1	Telecommunications Plant Under Construction—Long Term—Contract.
2004.2	2004.2	Telecommunications Plant Under Construction—Long Term—Force Account.
2004.3	2004.3	Telecommunications Plant Under Construction—Long Term—Work Orders.
		Telecommunications Plant in Service
	2210.11	Central Office Switching—Analog.
	2210.21	Central Office Switching—Digital.
	2210.31	Central Office Switching—Electro-Mechanical—Step-by-Step.
	2210.32	Central Office Switching—Electro-Mechanical—Crossbar.
	2210.33	Central Office Switching—Electro-Mechanical—Other.
	2230.11	Central Office Transmission—Radio Systems—Satellite and Earth Station Facilities.
	2230.12	Central Office Transmission—Radio Systems—Other.
	2230.21	Central Office Transmission—Circuit Equipment.
		Depreciation and Amortization
3100x	3100x	Retirement Work in Progress.
		Current Liabilities
4010.11	4010.11	Accounts Payable to Affiliated Companies.
4010.21	4010.21	Accounts Payable to Nonaffiliated Companies.
4010.22	4010.22	Accounts Payable—Employees' Income Tax Withheld.
4010.23	4010.23	Accounts Payable—FICA Taxes Withheld.
4010.24	4010.24	Accounts Payable—Federal Excise Taxes.
4010.25	4010.25	Accounts Payable—Payroll.
4070.1	4070.1	Income Taxes Accrued—Federal.
4070.2	4070.2	Income Taxes Accrued—State and Local
4080.1	4080.1	Other Taxes Accrued—Property.
4080.2	4080.2	Other Taxes Accrued—Employer's Portion—FICA.
4080.3	4080.3	Other Taxes Accrued—Federal Unemployment.
4080.4	4080.4	Other Taxes Accrued—State Unemployment.
4080.5	4080.5	Other Taxes Accrued—Miscellaneous.
4120.1	4120.1	Unmatured Interest Accrued—REA Notes.
4120.2	4120.2	Unmatured Interest Accrued—Telephone Bank Notes.
4120.3	4120.3	Unmatured Interest Accrued—Federal Financing Bank Notes.
4120.4	4120.4	Unmatured Interest Accrued—Bank for Cooperatives Notes.
4120.5	4120.5	Unmatured Interest Accrued—Rural Telephone Finance Cooperative Notes.
4120.6	4120.6	Other Accrued Liabilities.
		Long-Term Debt
4210.11	4210.11	Funded Debt—Other.
4210.12	4210.12	REA Notes.
4210.13	4210.13	Telephone Bank Notes.
4210.14	4210.14	Federal Financing Bank Notes.
4210.15	4210.15	Bank for Cooperatives Notes.
4210.16	4210.16	Rural Telephone Finance Cooperative Notes.
4210.17	4210.17	REA Notes—Deferred Interest.
4210.18	4210.18	REA Notes—Advance Payments, Dr.
4210.19	4210.19	Funded Debt—Other—Unadvanced, Dr.
4210.20	4210.20	REA Notes—Unadvanced, Dr.
4210.21	4210.21	Telephone Bank Notes—Unadvanced, Dr.
4210.22	4210.22	Federal Financing Bank Notes—Unadvanced, Dr.
4210.23	4210.23	Bank for Cooperatives Notes—Unadvanced, Dr.
4210.24	4210.24	Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.
		Stockholders' Equity and Patronage Capital
4540.11	4540.11	Capital Stock Subscribed.
4540.12	4540.12	Memberships Subscribed but Unissued.
4540.13	4540.13	Members' Equity Certificates Subscribed but Unissued.
4540.21	4540.21	Memberships Issued.
4540.22	4540.22	Members' Equity Certificates Issued.
4540.23	4540.23	Members' Equity—Other.
4540.31	4540.31	Installments Paid on Capital Stock.
4540.32	4540.32	Installments Paid on Memberships Subscribed.
4540.33	4540.33	Installments Paid on Equity Certificates Subscribed.
4540.41	4540.41	Other Capital—Miscellaneous.
4550.1	4550.1	Operating Margins.
4550.2	4550.2	Nonoperating Margins.
4550.3	4550.3	Other Margins.
4550.4	4550.4	Patronage Capital Assignable.
4550.5	4550.5	Patrons' Capital Credits Assigned.
4550.6	4550.6	Gain on the Retirement of Capital Credits.

Class of company Account No. A	Class of company Account No. B	Account title
		Plant Specific Operations Expense
	6210.11	Analog Electronic Expense.
	6210.21	Digital Electronic Expense.
	6210.31	Electro-Mechanical Expense.
	6230.11	Radio Systems Expense.
	6230.21	Circuit Equipment Expense.
		Plant Nonspecific Operations Expense
	6560.1	Depreciation Expense.
	6560.2	Amortization Expense.
		Operating Taxes.
	7200.1	Operating Investment Tax Credits—Net.
	7200.2	Operating Federal Income Taxes.
	7200.3	Operating State and Local Income Taxes.
7240.1	7200.41	Operating Taxes—Property.
7240.2	7200.42	Operating Taxes—Miscellaneous.
	7200.5	Provision for Deferred Operating Income Taxes—Net.
		Nonoperating Income and Expense
	7300.1	Dividend Income.
	7300.2	Interest Income.
	7300.3	Income From Sinking and Other Funds.
	7300.4	Allowance for Funds Used During Construction.
	7300.5	Gains or Losses from the Disposition of Certain Property.
	7300.6	Other Nonoperating Income and Expense.
		Nonoperating Taxes
	7400.1	Nonoperating Investment Tax Credits—Net.
	7400.2	Nonoperating Federal Income Taxes.
	7400.3	Nonoperating State and Local Income Taxes.
	7400.4	Nonoperating Other Taxes.
	7400.5	Provision for Deferred Nonoperating Income Taxes—Net.
		Extraordinary Items
	7600.1	Extraordinary Income Credits.
	7600.2	Extraordinary Income Charges.
	7600.3	Current Income Tax Effect of Extraordinary Items—Net.
	7600.4	Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
1130.1	1120.11	*Cash—General Fund* This account shall include all unrestricted funds derived from revenues and other sources which are on deposit in banks or other financial institutions and available on demand. It shall also include funds in transit to the depository for which customers and agents have received credit on their accounts. Separate subaccounts should be maintained for each bank account in which general fund cash is deposited.
1130.2	1120.12	*Cash—Construction Fund Trustee* This account shall include all loan funds received from REA, the Rural Telephone Bank, the Federal Financing Bank, the Bank for Cooperatives, the Rural Telephone Finance Cooperative, and all non-loan funds supplied by the borrower under the terms of the loan contract or otherwise required by REA. The offsetting credit for funds received from REA shall be to Account 4210.20, REA Notes—Unadvanced, Dr.; funds received from the Rural Telephone Bank, to Account 4210.21, Telephone Bank Notes—Unadvanced, Dr.; funds received from the Federal Financing Bank, to Account 4210.22, Federal Financing Bank Notes—Unadvanced, Dr.; funds received from the Bank for Cooperatives, to Account 4210.23, Bank for Cooperatives Notes—Unadvanced, Dr.; and funds received from the Rural Telephone Finance Cooperative, to Account 4210.24, Rural Telephone Finance Cooperative Notes—Unadvanced, Dr.
1130.3	1120.13	*Cash—Transfer of Funds* This account shall include all transfers of funds from one bank account to another. This account shall be charged with the amount of a check drawn for the transfer, and credited when the amount transferred is entered into the Cash Receipts Book.
	1120.21	*Special Cash Deposits* This account shall include all cash on special deposit, other than in sinking and other special funds provided for elsewhere, to pay dividends, interest, and other debts, when such payments are due one year or less from the date of deposit; the amount of cash deposited to insure the performance of contracts to be performed within one year from the date of the deposit; and other cash deposits of a special nature not provided for elsewhere. This account shall include the amount of cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced, and also cash realized from the sale of the company's securities and deposited with trustees to be held until invested in physical property of the company or for disbursement when the purposes for which the securities were sold are accomplished.
1150.1	1120.31	*Petty Cash Fund* This account shall include funds in the custody of employees or agents for making minor disbursements. The fund shall be operated on an inprest basis. Expenditures shall be supported by receipts, and reimbursements to the fund shall be for the exact amount of such expenditures and shall be charged to the various accounts to which the expenditures are allocable. At all times, the total of the cash on hand and the unreimbursed expenditures shall equal the amount of the fund.
1150.2	1120.32	*Change Fund* This account shall include funds in the custody of employees or agents for making change. Records shall be kept of the amount held by each person. Disbursements shall not be made from the fund.
1220.1	1220.1	*Materials and Supplies** This account shall include the cost of materials and supplies held in stock including plant supplies, motor vehicles supplies, tools, fuel, other supplies and material and articles of the company in process of manufacture for supply stock.

Class of company		Account title
Account No.		
A	B	
		Transportation charges and sales and use taxes, as far as practicable, shall be included as a part of the cost of the particular material to which they relate. Transportation and sales and use taxes which are not included as part of the cost of particular material shall be equitably apportioned among the accounts to which material is charged. As far as practicable, cash and other discounts on material shall be deducted in determining cost of the particular material to which they relate or credited to the account to which the material is charged. When such deduction is not practicable, discounts shall be equitably apportioned among the accounts to which material is charged. Material recovered in connection with construction, maintenance or retirement of property shall be charged to this account as follows: —Reusable items that, when installed or in service, were retirement units shall be included in this account at the original cost. —Reusable minor tiems that, when installed or in service, were not retirement units shall be included in this account at current prices new. —The cost of repairing reusable material shall be charged to the appropriate lant Specific Operations Expense accounts. —Scrap and nonusable material included in this account shall be carried at the estimated amount which will be received therefor. The difference between the amounts realized for scrap and nonusable material sold, and the amounts at which it is carried in this account shall be adjusted in the accounts credited when the material was taken up in this account. Interest paid on material bills, the payments of which are delayed, shall be charged to Account 7540, Other Interest Deductions. Inventories of materials and supplies shall be taken during each calendar year and the adjustments to this account shall be charged or credited to Account 6512, Provisioning Expense.
1220.2	1220.2	*Property Held for Sale or Lease**
		This account shall include the cost of all items purchased for resale or lease. The cost shall include applicable transportation charges, sales and use taxes, and cash and other purchase discounts. Inventory shortages and overages shall be charged and credited, respectively to Account 7991, Other Nonregulated Revenues. *These accounts shall not include items which are related to a nonregulated activity unless that activity involves joint or common use of assets and resources in the provision of regulated and nonregulated products and services.
1220.3	1220.3	*Exempt Materials—Clearing*
		This account shall include the cost of materials and supplies designated as exempt material on the carrier's "Exempt Material List". Charges to this account shall be cleared monthly to the primary plant and maintenance accounts in accordance with percentages developed by the individual carriers. When there is a substantial amount of exempt material on hand at the end of the year, substantial enough to distort net income or margins, a physical inventory may be taken. The cost of the inventory on hand shall be debited to this account and credited to the appropriate primary plant and maintenance accounts on a pro-rata basis related to the original charges to these accounts. This entry shall be reversed at the first of the year.
	1280.1	*Prepaid Rents*
		This account shall include the amount of rents paid in advance of the period in which it is chargeable to income, except amounts chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the rents are paid, this account shall be credited monthly and the appropriate account charged.
	1280.2	*Prepaid Taxes*
		This account shall include the balance of all taxes paid in advance of the period in which they are chargeable to income, except amounts chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the taxes are paid, this account shall be credited monthly and the appropriate account charged.
	1280.3	*Prepaid Insurance*
		This account shall include the amount of insurance premiums paid in advance of the period in which they are chargeable to income, except premiums chargeable to telecommunications plant under construction and minor amounts which may be charged directly to the final accounts. As the term expires for which the premiums are paid, this account shall be credited monthly and the appropriate account charged.
	1280.4	*Prepaid Directory Expenses*
		This account shall include the cost of preparing, printing, binding, and delivering directories and the cost of soliciting advertisements for directories, except minor amounts which may be charged directly to Account 6620, Services. Amounts in this account, shall be cleared to Account 6620 by monthly charges representing that portion of the expenses applicable to each month.
	1280.5	*Other Prepayments*
		This amount shall include prepayments, other than those includable in Accounts 1280.1 through 1280.4 except minor amounts which may be charged directly to the final accounts. As the term expires for which the payments apply, this account shall be credited monthly and the appropriate account charged.
1402.1	1402.1	*Investments in Nonaffiliated Companies—Class B RTB Stock*
		This account shall include the par value of the required purchase of Class B Rural Telephone Bank stock and the par value of the Class B Rural Telephone Bank stock received as a patronage refund. This account shall be debited at the time the refund is received and Account 1402.11, Investments in Nonaffiliated Companies—Class B RTB Stock—CR., credited. This account shall be credited and Account 1402.11 debited when the patronage refund is redeemed.
1402.11	1402.11	*Investments in Nonaffiliated Companies—Class B RTB Stock—Cr.*
		This account shall include the par value of Class B Rural Telephone Bank stock received as a patronage refund. This account shall be credited at the time the refund is received and Account 1402.1, Investments in Nonaffiliated Companies—Class B RTB Stock, debited. This account shall be debited and Account 1402.1 credited when the patronage refund is redeemed.
1402.2	1402.2	*Investments in Nonaffiliated Companies—Class C RTB Stock*
		This account shall include the par value of the company's investment in Class C Rural Telephone Bank stock. Cash dividends on Class C stock shall be recorded in Account 7310/7300.1, Dividend Income, when declared.
1402.3	1402.3	*Other Investments in Nonaffiliated Companies*
		This account shall include the acquisition cost of the company's investment in securities issued by non-affiliated companies, other than securities held in special funds which shall be charged to Account 1408, Sinking Funds, and also its investment advances to such parties and special deposits of cash for more than one year from the date of deposit. Declines in value of investments shall be charged to Account 4540.41, Other Capital, if temporary and as a current period loss if permanent. Detailed records shall be maintained to reflect unrealized losses for each investment.
2001.1	2001.1	*Telecommunications Plant in Service—Classified*
		This account shall include the original cost of the property capitalized in Accounts 2110 through 2690.

Class of company Account No. A	Class of company Account No. B	Account title
2001.2	2001.2	*Telecommunications Plant in Service—Unclassified* This account shall include the original cost of telecommunications property which has been completed and placed in service but which has not been classified pending completion of final inventories of construction, final cost summaries, etc. The balance in this account is subject to depreciation charges.
2003.1	2003.1	*Telecommunications Plant Under Construction—Short Term—Contract* This account shall include all costs incurred in the construction of telecommunications plant performed under contract and designed to be completed in one year or less. Included among these costs are contractor payments, and charges for engineering, supervision, taxes, insurance, transportation, and other costs incurred in contract construction. This account shall be maintained such that the various items of costs are readily identifiable.
2003.2	2003.2	*Telecommunications Plant Under Construction—Short Term—Force Account* This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and designed to be completed in one year or less. Included among these costs are charges for material, labor, engineering, supervision, taxes, insurance, transportation, supply expense, and other costs incurred in the construction. This account shall be maintained so that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.
2003.3	2003.3	*Telecommunications Plant Under Construction—Short Term—Work Orders* This account shall include all costs incurred in the construction of telecommunications plant performed under a work order system or a line extension contract and designed to be completed in one year or less. This type of construction generally includes service installations, subscriber extensions, and minor plant improvements after the completion of the initial system. Included among these costs are charges for labor, materials and supplies, transportation, payroll taxes, insurance, supervision and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of individual jobs. These records shall be reconciled periodically with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
2004.1	2004.1	*Telecommunications Plant Under Construction—Long Term—Contract* This account shall include all costs incurred in the construction of telecommunications plant performed under contract and designed to be completed in more than one year. Included among these costs are contractor payments, and charges for engineering, supervision, taxes, insurance, transportation, interest during construction, and other costs incurred in contract construction. This account shall be maintained such that the various items of cost are readily identified.
2004.2	2004.2	*Telecommunications Plant Under Construction—Long Term—Force Account* This account shall include all costs incurred in the construction of telecommunications plant performed by the borrowers' own employees and designed to be completed in more than one year. Included among these costs are charges for material, labor engineering, supervision, taxes, insurance, transportation, supply expense, interest during construction, and other costs incurred in the construction. This account shall be maintained such that the various items of cost are readily identified. Specific subaccounts should be maintained to distinguish individual projects.
2004.3	2004.3	*Telecommunications Plant Under Construction—Long Term—Work Orders* This account shall include all costs incurred in the construction of telecommunications plant performed under a work order system or a line extension contract and designed to be completed in more than one year. Included among these costs are charges for labor, materials and supplies, transportation, payroll taxes, insurance, supervision, interest during construction, and other costs incurred in the construction. Subsidiary records shall be maintained to reflect the cost of individual jobs. These records shall be reconciled periodically with the general ledger control account. Specific subaccounts should be maintained to accumulate costs incurred under line extension contracts.
	2210.11	*Central Office Switching—Analog** This account shall include the original cost of stored program control analog circuit-switching and associated equipment. This account shall also include the original cost of remote analog electronic circuit switches.
	2210.21	*Central Office Switching—Digital** This account shall include the original cost of stored program control digital switches and their associated equipment. Included in this account is the original cost of digital switches which utilize either dedicated or non-dedicated circuits. This account shall also include the original cost of remote digital electronic switches.
	2210.31	*Central Office Switching—Electro-Mechanical—Step-by-Step** This account shall include the original cost of step-by-step and associated circuit-switching equipment.
	2210.32	*Central Office Switching—Electro-Mechanical—Crossbar** This account shall include the original cost of crossbar and associated circuit switching equipment. Also included in this account is the original cost of electronic translator system equipment used in switching.
	2210.33	*Central Office Switching—Electro-Mechanical—Other** This account shall include the original cost of all other types of non-electronic circuit-switching equipment such as panel systems and their associated circuit-switching equipment. *Switching plant excludes switchboards which perform operator assistance functions and equipment which is an integral part thereof. It does not exclude equipmnent used solely for the recording of calling telephone numbers in connection with customer dialed charged traffic, dial tandem switches, and special switchboards used in conjunction with private line service; such equipment shall be classified to the particular switch that it serves.
	2230.11	*Central Office Transmission—Radio Systems—Satellite and Earth Station Facilities* This account shall include the original cost of an ownership interest in satellites (including land-side spares), other spare parts, materials, and supplies. It shall include launch insurance and other satellite launch costs. This account shall also include the original cost of earth stations and spare parts, materials, and supplies therefor.
	2230.12	*Central Office Transmission—Radio Systems—Other* This account shall include the original cost of radio equipment used to provide radio communication channels. Radio equipment is that equipment which is used for the generation, amplification, propagation, reception, modulation, and demodulation of radio waves in free space over which communications channels can be provided. This account shall also include the associated carrier and auxiliary equipment and patch bay equipment which is an integral part of the radio equipment. Such equipment may be located in central office buildings, terminal rooms, or repeater stations or may be mounted on towers, masts, or other supports.
	2230.21	*Central Office Transmission—Circuit Equipment*

Class of company	Account No.	Account title
A	B	
		This account shall include the original cost of equipment which is used to reduce the number of physical pairs otherwise required to serve a given number of subscribers by utilizing carrier systems, concentration stages or combinations of both. It shall include equipment that provides for simultaneous use of a number of interoffice channels on a single transmission path. This account shall also include the original cost of equipment which is used for the amplification, modulation, regeneration, circuit patching, balancing or control of signals transmitted over interoffice communications transmission channels. This account shall include the original cost of equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels. This account shall also include the original cost of associated material used in the construction of such plant. Circuit equipment may be located in central offices, in manholes, on poles, in cabinets or huts or at other locations. This account excludes carrier and auxiliary equipment and patch bay which are recorded in Account 2230.12, Central Office Transmission—Radio Systems—Other
3100x	3100x	*Retirement Work in Progress* This account shall be charged with the original cost of property retired from the telecommunications plant accounts. It shall also be charged with all of the costs incurred in removing the retired plant from service. This account shall be credited with the salvage value of materials recovered in the retirement of the telecommunications plant. At such time as the retirement work order is complete, the net income/loss resulting therefrom shall be transferred from this account to the appropriate primary plant depreciation reserve account.
4010.1	4010.11	*Accounts Payable to Affiliated Companies* This account shall include all amounts currently due to affiliated companies for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, material and supplies, repairs to telecommunications plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts.
4010.21	4010.21	*Accounts Payable to Nonaffiliated Companies* This account shall include all amounts currently due to nonaffiliated companies for recurring trade obligations, and not provided for in other accounts, such as those for traffic settlements, materials and supplies, repairs to telecommunications plant, matured rents, and interest payable under monthly settlements on short-term loans, advances, and open accounts.
4010.22	4010.22	*Accounts Payable—Employees' Income Tax Withheld* This account shall include income taxes payable that have been withheld from employees' salaries.
4010.23	4010.23	*Accounts Payable—FICA Taxes Withheld* This account shall include FICA taxes payable that have been withheld from employees' salaries.
4010.24	4010.24	*Accounts Payable—Federal Excise Taxes* This account shall include Federal excise taxes payable.
4010.25	4010.25	*Accounts Payable—Payroll* This account shall include amounts payable to the company's employees in the form of salaries or wages.
4070.1	4070.1	*Income Taxes Accrued—Federal* For Class A companies, this account shall be credited and Accounts 7220, 7420, and 7630, as appropriate, shall be debited for the amount of Federal income taxes accrued during the current operating period. For Class B companies, this account shall be credited and Accounts 7220.2, 7400.2, and 7600.3, as appropriate, shall be debited for the amount of Federal income taxes accrued during the current operating period.
4070.2	4070.2	*Income Taxes Accrued—State and Local* For Class A companies, this account shall be credited and Accounts, 7230, 7430, and 7630, as appropriate, shall be debited for the amount of state and local income taxes accrued during the current operating period. For Class B companies, this account shall be credited and Accounts, 7200.3, 7400.3, and 7600.3, as appropriate, shall be debited for the amount of state and local income taxes accrued during the current operating period.
4080.1	4080.1	*Other Taxes Accrued—Property* This account shall be credited and Account 7240.1/7200.41, Operating Taxes—Property, shall be debited for the amount of property taxes accrued during the current operating period.
4080.2	4080.2	*Other Taxes Accrued—Employer's Portion—FICA* This account shall be credited and the appropriate construction, depreciation, or expense account shall be debited for the employer's portion of FICA taxes accrued during the current operating period.
4080.3	4080.3	*Other Taxes Accrued—Federal Unemployment* This account shall be credited and the appropriate construction, removal, or expense account shall be debited for the amount of Federal unemployment taxes accrued during the current operating period.
4080.4	4080.4	*Other Taxes Accrued—State Unemployment* This account shall be credited and the appropriate construction, removal, or expense account shall be debited for the amount of state unemployment taxes accrued during the current operating period.
4080.5	4080.5	*Other Taxes Accrued—Miscellaneous* This account shall be credited and Account 7240.2/7200.42, Operating Taxes—Miscellaneous, shall be debited for the amount of all other taxes accrued during the current operating period and not provided for elsewhere such as a gross receipts tax, franchise taxes, and capital stock taxes.
4120.1	4120.1	*Unmatured Interest Accrued—REA Notes* This account shall include the interest accrued as of the balance sheet date but not payable until after that date on REA mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.2	4120.2	*Unmatured Interest Accrued—Telephone Bank Notes* This account shall include the interest accrued as of the balance sheet date but not payable until after that date on Rural Telephone Bank mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.3	4120.3	*Unmatured Interest Accrued—Federal Financing Bank Notes*

Class of company Account No. A	Class of company Account No. B	Account title
		This account shall include the interest accrued as of the balance sheet date but not payable until after that date on Federal Financing Bank mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.4	4120.4	*Unmatured Interest Accrued—Bank for Cooperatives Notes* This account shall include the interest accrued as of the balance sheet date but not payable until after that date on Bank for Cooperatives mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.5	4120.5	*Unmatured Interest Accrued—Rural Telephone Finance Cooperative Notes* This account shall include the interest accrued as of the balance sheet date but not payable until after that date on Rural Telephone Finance Cooperative mortgage notes. Interest expense incurred during the period of construction of telecommunications plant shall be charged to Account 2004, Telecommunications Plant Under Construction—Long Term, and credited to Account 7340/7300.4, Allowance for Funds Used During Construction.
4120.6	4120.6	*Other Accrued Liabilities* This account shall include the amount of wages, compensated absences, interest on indebtedness of the company, dividends on capital stock, and rents accrued as of the balance sheet date but not payable until after the date. This account shall not include interest accrued on REA, Rural Telephone Bank, Bank for Cooperatives, Federal Financing Bank, or Rural Telephone Finance Cooperative debt.
4210.11	4210.11	*Funded Debt—Other* This account shall include the total face amount of unmatured debt, maturing more than one year from the date of issue, issued by the company and not retired, and the total face amount of similar unmatured debt of other companies, the payment of which has been assumed by the company, including funded debt the maturity of which has been extended by specific agreement. This account shall not include unmatured REA, Rural Telephone Bank, Federal Financing Bank, Bank for Cooperatives, or Rural Telephone Finance Cooperative debt.
4210.12	4210.12	*REA Notes* This account shall include the total face amount of unmatured REA mortgage notes. Account 4210.20, REA Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4210.13	4210.13	*Telephone Bank Notes* This account shall include the total face amount of unmatured Rural Telephone Bank mortgage notes. Account 4210.21, Telephone Bank Notes—Unadvanced, Dr., shall be changed and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4210.14	4210.14	*Federal Financing Bank Notes* This account shall include the total face amount of unmatured Federal Financing Bank mortgage notes. Account 4210.22, Federal Financing Bank Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4210.15	4210.15	*Bank for Cooperatives Notes* This account shall include the total face amount of unmatured Bank for Cooperatives mortgage notes. Account 4210.23, Bank for Cooperatives Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4210.16	4210.16	*Rural Telephone Finance Cooperative Notes* This account shall include the total face amount of unmatured Rural Telephone Finance Cooperative mortgage notes. Account 4210.24, Rural Telephone Finance Cooperative Notes—Unadvanced, Dr., shall be charged and this account credited upon execution of the notes. If principal installments are not paid at the maturity date, the amount due shall be transferred to Account 4050, Current Maturities—Long-Term Debt.
4210.17	4210.17	*REA Notes—Deferred Interest* This account shall include interest accrued on REA mortgage notes, the payment of which has been deferred in accordance with the terms of the notes or extension agreements. The offsetting charge shall be to Account 7510, Interest on Funded Debt, for Class A companies and Account 7500, Interest and Related Items, for Class B companies. If interest payments are not made at the due date, this account shall be debited and Account 4010.21, Accounts Payable to Nonaffiliated Companies, credited with the amount of the matured interest.
4210.18	4210.18	*REA Notes—Advance Payments, Dr.* This account shall include all payments on REA mortgage notes made in advance of the due date and not applied to a specific quarterly payment. As these payments are applied to specific notes, this account shall be credited and the long-term debt and interest liability accounts debited.
4210.19	4210.19	*Funded Debt—Other—Unadvanced, Dr.* This account shall include the total face amount of notes executed to others, for which funds have not been received. This account shall be credited and Account 1130.1/1120.11, Cash—General Funds, debited when funds are received from the lender.
4210.20	4210.20	*REA Notes—Unadvanced, Dr.* This account shall include the total face amount of REA mortgage notes for which funds have not been received. This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received from REA.
4210.21	4210.21	*Telephone Bank Notes—Unadvanced, Dr.* This account shall include the total face amount of Rural Telephone Bank mortgage notes for which funds have not been received. This account shall be credited and Account 1130.2/1120.12, Cash—Construction Fund Trustee, debited when funds are received from the Rural Telephone Bank.

Class of company Account No. A	Class of company Account No. B	Account title
		Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state, and local income taxes.
	7300.1	*Dividend Income*
		This account shall include dividends on investments in common and preferred stock, which is the property of the company, whether such stock is owned by the company and held in its treasury, or deposited in trust, or otherwise controlled. This account shall not include dividends or other returns on securities issued or assumed by the company and held by or for it, whether pledged as collateral, or held in its treasury, in special deposits, or in sinking or other funds. Dividends on stocks of other companies held in sinking or other funds shall be credited to Account 7300.3, Income from Sinking and Other Funds. Dividends received and receivable from affiliated companies accounted for on the equity method shall be included in Account 1401, Investments in Affiliated Companies, as reduction of the carrying value of the investments.
	7300.2	*Interest Income*
		This account shall include interest on securities, including notes and other evidences of indebtedness which are the property of the company, whether such securities are owned by the company and held in its treasury, or deposited in trust (except in sinking or other funds) or otherwise controlled. It shall also include interest on bank balances, certificates of deposits, open accounts, and other analogous items. There shall be included in this account for each month, the applicable amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the difference between the purchase price and the par value of securities owned, the income from which is includable in this account. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried. Any such difference remaining unextinguished at the sale or upon the maturity and satisfaction of such securities shall be cleared to Account 7300.6. Other Nonoperating Income and Expense.
	7300.3	*Income from Sinking and Other Funds*
		This account shall include the income accrued on cash, securities issued by other companies, and other assets (not including securities issued or assumed by the company) held in sinking and other funds. There shall be included in this account for each month the applicable amount requisite to extinguish, during the interval between the date of acquisition and the date of maturity, the difference between the purchase price and the par value of securities held in sinking or other funds. Amounts thus credited or charged shall be concurrently included in the accounts in which the securities are carried. Any such differences remaining unextinguished upon the maturity and satisfaction of such securities shall be cleared to Account 7300.6. Other Nonoperating Income and Expense.
	7300.4	*Allowance for Funds Used During Construction*
		This account shall be credited with such amounts as are charged to the telecommunications plant accounts for the purpose or recording an allowance for funds used for construction purposes.
	7300.5	*Gains or Losses from the Disposition of Certain Property*
		This account shall include gains or losses resulting from the disposition of land or artworks; plant with traffic, and nonoperating telecommunications plant not previously used in the provision of telecommunication services.
	7300.6	*Other Nonoperating Income and Expense*
		This account shall include all other items of income and gains or losses from activities not specifically provided for elsewhere such as gains or losses realized on the sale of temporary cash investments or marketable equity securities; fees collected in connection with the exchange of coupon bonds for registered bonds; uncollectible amounts previously credited to Accounts 7300.1, 7300.2, 7300.3, 7300.4, 7300.5, and 7300.6, gains or losses from the extinguishment of debt made to satisfy sinking fund requirements; gains or losses of a nonoperating nature arising from the exchange or translation of foreign currency; net unrealized losses on investments in current marketable equity securities; write-downs or write-offs of the book costs of investments in equity securities due to permanent impairment; amortization of goodwill; the company's share of earnings or losses of affiliated companies accounted for on the equity method; and the net balance of the revenue from and the expenses of property, plant, and equipment, the cost of which is includable in Account 2006, Nonoperating Plant.
	7400.1	*Nonoperating Investment Tax Credits—Net*
		This account shall be charged and Account 4330, Unamortized Nonoperating Investment Tax Credits—Net, shall be credited with nonoperating investment tax credits generated from qualified expenditures related to other operations which the company has elected to defer rather than recognize currently in income. This account shall be credited and Account 4330, Unamortized Nonoperating Investment Tax Credits—Net, shall be charged with the amortization of each year's investment tax credits included in such accounts relating to amortization of previously deferred investment tax credits of other property or regulated property, the amortization of which does not serve to reduce costs of service (but the unamortized balance does reduce rate base) for ratemaking purposes. Such amortization shall be determined with reference to the period of time used for computing book depreciation on the property with respect to which the tax credits relate.
	7400.2	*Nonoperating Federal Income Taxes*
		This account shall be charged and Account 4070.1, Income Taxes Accrued—Federal, shall be credited for the amount of nonoperating Federal income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. Companies that adopt the flowthrough method of accounting for investment tax credits shall reduce the calculated provision in this account by the entire amount of the credit realized during the year. Tax credits, if normalized, shall be recorded consistent with the accounting for investment tax credits. No entries shall be made to this account to reflect interperiod tax allocation.
	7400.3	*Nonoperating State and Local Income Taxes*
		This account shall be charged and Account 4070.2, Income Taxes Accrued—State and Local, shall be credited for the amount of nonoperating state and local income taxes for the current period. This account shall also reflect subsequent adjustments to amounts previously charged. Taxes shall be accrued each month on an estimated basis and adjustments made as later data becomes available. No entries shall be made to this account to reflect interperiod tax allocation.
	7400.4	*Nonoperating Other Taxes*
		This account shall be charged and Account 4080.5, Other Taxes Accrued—Miscellaneous, shall be credited for all nonoperating taxes, other than Federal, state, and local income taxes, and payroll related taxes for the current period. Among the items includable in this account are property, gross receipts, franchise and capital stock taxes. This account shall also reflect subsequent adjustments to amounts previously charged.
	7400.5	*Provision for Deferred Nonoperating Income Taxes—Net*

Class of company		Account title
Account No.		
A	B	
		This account shall be charged or credited, as appropriate, with contra entries recorded in either Account 4110, Net Current Deferred Nonoperating Income Taxes, or Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes, as appropriate, for nonoperating tax expenses that have been deferred. Subsidiary record categories shall be maintained to distinguish between property and nonproperty related deferrals and so that the company may separately report the amounts contained herein that relate to Federal, state, and local income taxes.
	7600.1	*Extraordinary Income Credits* This account shall be credited with nontypical, noncustomary, and infrequently recurring gains which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7600.3, Current Income Tax Effect for Extraordinary Items—Net, and Account 7600.4, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
	7600.2	*Extraordinary Income Charges* This account shall be debited with nontypical, noncustomary, and infrequently recurring losses which would significantly distort the current year's income computed before such extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 7600.3, Current Income Tax Effect for Extraordinary Items—Net, and Account 7600.4, Provision for Deferred Income Tax Effect of Extraordinary Items—Net.
	7600.3	*Current Income Tax Effect of Extraordinary Items—Net* This account shall be charged or credited and Account 4070.1, Income Taxes Accrued—Federal, or Account 4070.2, Income Taxes Accrued—State and Local, shall be credited or charged, as appropriate, for all current income tax effects (Federal, state, and local) of items included in Account 7600.1, Extraordinary Income Credits, and Account 7600.2, Extraordinary Income Charges.
	7600.4	*Provision for Deferred Income Tax Effect of Extraordinary Items—Net* This account shall be charged or credited, as appropriate, with a contra amount recorded in Account 4350, Net Noncurrent Deferred Nonoperating Income Taxes, or Account 4110, Net Current Deferred Nonoperating Income Taxes, for the income tax effects (Federal, state, and local) of items included in Account 7600.1, Extraordinary Income Credits, and Account 7600.2, Extraordinary Income Charges, that have been deferred.
		§ 1770.16 Supplementary Accounts Required of Nonprofit Organizations
		Current Assets
1350.1	1350.1	Subscriptions to Capital Stock.
1350.2	1350.2	Subscriptions to Memberships.
1350.3	1350.3	Subscriptions to Members' Equity Certificates.
1350.4	1350.4	Other Current Assets.
		Current Liabilities
4130.1	4130.1	Patronage Capital Payable.
4130.2	4130.2	Other Current Liabilities—Miscellaneous.
		Long-Term Debt
4270.1	4270.1	Members' Redeemable Equity Certificates Subscribed but Unissued.
4270.2	4270.2	Members' Redeemable Equity Certificates Issued.
4270.3	4270.3	Other Long-Term Debt.
1350.1	1350.1	*Subscriptions to Capital Stock* This account shall include the balance due from subscribers upon legally enforceable subscriptions to capital stock. The purchase price of subscriptions shall be charged to this account at the time the subscription is received. The par value of the stock subscribed shall be credited to Account 4540.11, Capital Stock Subscribed, and the difference between the purchase price and the par value shall be credited to Account 4520, Additional Paid-In Capital.
1350.2	1350.2	*Subscriptions to Memberships* This account shall include the balance due on memberships subscribed. The face amount of memberships subscribed shall be charged to this account at the time the subscription is received. The offsetting credit shall be to Account 4540.12, Memberships Subscribed but Unissued. A subscription ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger.
1350.3	1350.3	*Subscriptions to Members' Equity Certificates* This account shall include the balance due on member's equity certificates subscribed. The face amount of certificates subscribed shall be charged to this account at the time the subscription is received. The offsetting credit shall be to Account 4540.13, Members' Equity Certificates Subscribed but Unissued, or to Account 4270.1, Members' Redeemable Equity Certificates Subscribed but Unissued. A subscription ledger shall be maintained to record for each subscriber, the amount subscribed, payments made, and the balance due. The balance in this account shall be reconciled monthly with the subscription ledger. The subscription ledger shall be maintained in such a manner as to separately identify redeemable and nonredeemable certificates.
1350.4	1350.4	*Other Current Assets* This account shall include the amount of all current assets which are not includable in Accounts 1120 through 1350.3.
4130.1	4130.1	*Patronage Capital Payable* This account shall include the amount of patronage capital which has been authorized to be returned to patrons.
4130.2	4130.2	*Other Current Liabilities—Miscellaneous* This account shall include liabilities of current character which are not includable in Accounts 4010 through 4130.1.
4270.1	70.1	*Members' Redeemable Equity Certificates Subscribed but Unissued* This account shall include the face amount of members' equity certificates which are redeemable at some specified future date for which subscriptions have been received but for which certificates have not been issued. This account shall be credited at the time the subscription is received and Account 1350.3, Subsriptions to Members' Equity Certificates, debited. This account shall be debited and Account 4270.2, Members' Redeemable Equity Certificates Issued, credited when a subscriber has paid the subscription in full and the equity certificates are issued.
4270.2	4270.2	*Members' Redeemable Equity Certificates Issued*

Class of company Account No. A	Class of company Account No. B	Account title
		This account shall include the face amount of outstanding members' equity certificates which are redeemable at some specified future date. A subsidiary members' redeemable equity certificate record shall be maintained to reflect the detail of the balance in this account.
4270.3	4270.3	*Other Long-Term Debt* This account shall include long-term debt not provided for elsewhere.

§§ 1770.17–1770.25 [Reserved]

Subpart C—Accounting Interpretations

§§ 1770.26–1770.45 [Reserved]

Dated: January 8, 1990.

Jack Van Mark,

Acting Administrator.

[FR Doc. 90–2388 Filed 1–31–90; 8:45 am]

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 91291–9291]

Environmental Requirements for Financial Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule change will amend EDA's rule on general requirements for financial assistance at 13 CFR 309.18 to include references to Federal, state and local environmental laws dealing with hazardous substances. The amended rule will advise EDA recipients that they are subject to laws.

DATES: *Effective Date:* February 1, 1990. Submit *comments* by April 2, 1990.

ADDRESSES: Send comments to Joseph M. Levine, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Room 7001, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, (202) 377–4687.

SUPPLEMENTARY INFORMATION: 13 CFR part 309.18 is being changed to add paragraph (c) which will advise EDA recipients that they are subject to any Federal, state and local environmental laws concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Public Law 96–510 (1980), as amended by Public Law 99–499 (1986), 42 U.S.C. § 9601–9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89–272 (1965), as amended by Public Law 94–580 (1976), Public Law 96–482 (1980) and Public Law 98–616 (1984), 42 U.S.C. 6901–6991.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; 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.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553, including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim rule are invited and should be sent to the address listed in the "ADDRESSES" section above.

Comments received by April 2, 1990 will be considered in promulgating a final rule.

Since a notice and an opportunity for comment are not required to be given for the rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511). This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 309

Community development; Grant programs-community development; Loan programs-community development; Penalties.

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

1. The authority citation for part 309 is revised to read as follows:

Authority: Section 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56703, as amended).

2. Section 309.18 is amended by adding a new paragraph (c) to read as follows:

§ 309.18 Environmental requirements.

* * * * *

(c) EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96–510 (1980), as amended by Public Law 99–499 (1986), 42 U.S.C. 9601–9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89–272 (1965), as amended by Public Law 94–580 (1976), Public Law 96–482 (1980) and Public Law 98–616 (1984), 42 U.S.C. 6901–6991.

Dated: January 22, 1990.

James L. Perry,

Acting Assistant Secretary for Economic Development.

[FR Doc. 90–2270 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–24–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3718-5; Docket No. AM602DE]

Approval and Promulgation of Air Quality Implementation Plans; Approval of a Revision to the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice announces the Administrator's approval of a revision to the Delaware State Implementation Plan (SIP) that amends Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, of the Delaware *Regulations Governing the Control of Air Pollution.* This amendment tightens the hydrocarbon emission standards for light duty gasoline vehicles and light duty gasoline trucks. This change became effective in the State on January 1, 1988. This amendment is being made as an effort to bring the Delaware Motor Vehicle Inspection and Maintenance (I/M) program's pre-1981 model year vehicle failure rate into conformance with assumptions supporting the EPA approval of the attainment demonstration for the Delaware SIP for ozone.

DATES: *Effective Date:* This action will become effective April 2, 1990, unless notice is received by March 5, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to David Arnold, Chief, Program Planning Section, at the EPA Regional Office address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Attn: David L. Arnold (3AM13)

Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903. Attn: Robert R. French

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Bunker (215) 597-4554, at the EPA Region III address above. The commercial and FTS numbers are the same.

SUPPLEMENTARY INFORMATION: As part of the 1982 revision to the Delaware State Implementation Plan for ozone, the State committed to implement a motor vehicle inspection and maintenance (I/M) program. The Delaware I/M program was implemented in January of 1983. The SIP required that light duty gasoline vehicles and trucks registered in New Castle County be tested for hydrocarbon emissions and the attainment demonstration assumed that a 15 percent failure rate for pre-1981 model year vehicles be maintained.

Analysis of the motor vehicle emission inspection data revealed that the failure rate for pre-1981 model year vehicles dropped from 17.6 percent in calendar year 1986 to 10.8% in calendar year 1987. In response to the drop in the failure rate, the State adopted tighter hydrocarbon emission standards on December 29, 1987. These standards became effective on January 1, 1988. Table 1 shows the new standards that have been implemented by the State. These emission standards replace the standards in Table 2 of Technical Memorandum #2, Regulation XXVI (26), appendix H of the 1982 Delaware SIP revision.

TABLE 1.—DELAWARE MOTOR VEHICLE HYDROCARBON EMISSION STANDARDS

Light duty gasoline vehicles	Light duty gasoline trucks	Hydrocarbon standards (ppm) [1]
1968–1970	1970–1972	[1000] *900*
1971–1974	1973–1978	[700] *600*
1975–1979	1979–1983	[450] *400*
1980		[275] *220*
1981 and later.	1984 and later	[220] *220*

[1] The figures in brackets ([ ]) are the old standards and the figures in italic are the new standards.

As a result of tightening the standards, the failure rate for pre-1981 vehicles rose to 15.1 percent in calendar year 1988. This failure rate conforms to the assumptions supporting the EPA approval of the attainment demonstration for the Delaware ozone SIP.

In addition, EPA is today approving alternative hydrocarbon emission standards (see Table 2) which will be used by the State if the standards implemented in January of 1988 do not result in the 15 percent failure rate in any subsequent year. Delaware's determination for the failure rate will be based on vehicle emission inspection data from the first ten months of the year. If the failure rate does not meet the attainment demonstration assumption, the State will implement the standards shown in Table 2 on the first day of the next calendar year.

TABLE 2.—DELAWARE MOTOR VEHICLE ALTERNATIVE HYDROCARBON EMISSION STANDARDS

Light duty gasoline vehicles	Light duty gasoline trucks	Hydrocarbon standards (ppm)
1968–1970	1970–1972	800
1971–1974	1973–1978	500
1975–1979	1979–1983	350
1980		220
1981 and later.	1981 and later	220

This revision to the Delaware SIP was adopted by the Department of Natural Resources and Environmental Control on December 29, 1987. As required by 40 CFR 51.102 the State of Delaware has certified that, after adequate public notice, on November 4, 1987 a public hearing was held in respect to this SIP revision.

Final Action

EPA approves this revision to the Delaware SIP which amends Regulation XXVI (26), Motor Vehicle Emissions Inspection Program, of the Delaware *Regulations Governing the Control of Air Pollution.* This approval is based on a determination that the revision meets the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register Notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on April 2, 1990.

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

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 13, 1989.

Edwin B. Erickson,

Regional Administrator.

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

PART 52—[AMENDED]

Supart I—Delaware

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.420 is amended by adding paragraph (c)(41) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(41) Revision submitted by the State of Delaware on April 28, 1988 amending the hydrocarbon motor vehicle emission testing standards in Regulation XXVI of the Delaware *Regulations Governing the Control of Air Pollution.*

(i) *Incorporation by reference.* (A) Revisions via Order 88–A–2, exhibit A, parts A and B, which is an amendment to Table 2 of Technical Memorandum Number 2 entitled "Motor Vehicle Inspection and Maintenance Program Emission Limit Determination". This revision was issued by the State on December 29, 1987.

[FR Doc. 90–2225 Filed 1–31–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3718–2]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In an April 26, 1989, (54 FR 17965) notice of proposed rulemaking, USEPA proposed to approve site-specific revisions to the Wisconsin State Implementation Plan (SIP) for ozone. These revisions would allow the Continental Can Company (Continental Can) to use internal offsets in conjunction with daily weighted emission limits at its Milwaukee and Racine, Wisconsin can manufacturing facilities. USEPA's action is based upon an August 20, 1985, State submittal and several amendments.

Today, USEPA is approving this revision for Continental Can to use internal offsets in conjunction with daily weighted emission limits.

EFFECTIVE DATE: This final rulemaking becomes effective on March 5, 1990.

ADDRESSES: Copies of the SIP revisions and related documents are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (Air/3), 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan at (312) 886–6031.

SUPPLEMENTARY INFORMATION: On August 20, 1985, the Wisconsin Department of Natural Resources (WDNR) submitted proposed revisions to the Wisconsin ozone SIP for Continental Can. These revisions are in the form of a variance for six can coating lines at Continental Can's Milwaukee plant and a variance for two can coating lines at Continental Can's Racine plant. WDNR submitted additional information regarding these proposals.

Background

The Continental Can Company has can manufacturing plants in Milwaukee and Racine. Both facilities are subject to the requirements for can coating operations identified at Natural Resources (NR) 422.05 (formerly NR 154.13(4)(c) of the Wisconsin Administrative Code. Under NR 422.05, (1) each sheet basecoat (exterior or interior or overvarnish) line must independently meet a VOC emission of 4.0 pounds per gallon, excluding water, and (2) each end sealing compound must meet a VOC emission of 4.3 pounds per gallon, excluding water. On November 13, 1984, Continental Can requested permission from the State to use internal offsets as a method of compliance for each of the two facilities.[1] One internal offset would be applicable to six can coating lines at the Milwaukee plant, and another would be applicable to two can coating lines at the Racine plant. The Wisconsin Department of Natural Resources (WDNR) approved the use of internal offsets, subject to certain conditions described in the variances. These include the use of a daily weighted average at each plant, a computer program to aid in emission calculations and production scheduling, as well as specified testing and recordkeeping conditions. On August 20, 1985, Wisconsin submitted the variances to USEPA as revisions to its SIP.[2]

In an April 26, 1989, (54 FR 17965) notice of proposed rulemaking, USEPA reproposed to approve these site-specific SIP revisions. During the 30-day comment period, USEPA received only one comment, in which the source objected to the length of time it had taken USEPA to propose action on the plan and noted that the variances, were no longer relevant. Part of the delay was due to USEPA originally publishing a "direct final" notice, as requested by the source, which had received adverse comments and had to be withdrawn. USEPA then reproposed the action. As to the source's assertion that the revisions are no longer relevant, the State of Wisconsin has not withdrawn the proposed revisions, and USEPA must take final action on the package.

Conclusion

USEPA has reviewed the compliance plans for Continental Can which rely on

[1] An internal offset allows a source credit for those coatings and coating lines that reduce emissions below the SIP-allowable limit to offset emissions from other coatings and coating lines that exceed the SIP-allowable limit. The total emissions allowed by the internal offsets are equivalent to those that would occur if each coating used were at the limits specified in the SIP.

[2] For a further discussion of the specifics of this revision and USEPA's analysis thereof, please see the April 26, 1989, (54 FR 17965) notice of proposed rulemaking and the accompanying technical support document; copies of which are available at the Regional office listed above.

the use of internal offsets for two can manufacturing plants located in Milwaukee and Racine. USEPA has determined that the compliance plans meet USEPA's requirements of air pollution control from can coating operations. USEPA has also determined that the use of internal offsets at the two facilities will not cause an increase in VOC emissions and, consequently, will not interfere with attainment of the ozone NAAQS in southeastern Wisconsin.[3]

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbon, Incorporation by reference, Intergovernmental relations.

Dated: December 29, 1989.

Valdas V. Adamkus,

Regional Administrator.

PART 52—[AMENDED]

Subpart YY—Wisconsin

Title 40 of the Code of the Federal Regulations, chapter 1, part 52, is amended as follows:

[3] Milwaukee and Racine are both included (as part of the Milwaukee-Racine, WI Consolidated Metropolitan Statistical Area) in appendix A of the November 24, 1987, Proposed Post-1987 Ozone Policy (52 FR 45044). Table A–1 in appendix A lists "Potential 1988 SIP Areas-Ozone." Milwaukee-Racine is listed as an area which exceeded the Ozone standard in the period from 1985–1987. On May 26, 1988, USEPA notified the Governor of Wisconsin that its Milwaukee-Racine ozone SIP is substantially inadequate to assure attainment of the ozone NAAQS and requires revision.

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding paragraph (c)(44) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(44) On August 20, 1985, Wisconsin submitted a revision to its volatile organic compound plan for the Continental Can Company. The revision allows the use of internal offsets, in conjunction with daily weighted emission limits, at Continental Can's Milwaukee and Racine can manufacturing facilities.

(i) *Incorporation by reference.*

(A) NR 422.05, as published in the (Wisconsin) Register, September, 1986, number 369, effective October 1, 1986.

* * * * *

[FR Doc. 90–2297 Filed 1–31–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 52 and 81

[FRL–3718–6; FL 026 and 032]

Approval and Promulgation of Implementation Plans, Florida: PM_{10} and Miscellaneous SIP Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: On May 19, 1988, the State of Florida submitted revisions to its State Implementation Plan (SIP) for particulate matter. These revisions became effective on May 30, 1988. In response to EPA comments, Florida made additional changes to its particulate matter SIP. These latest changes became state effective on July 9, 1989 and were submitted to EPA on July 18, 1989. The revisions were adopted pursuant to the requirements of section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards known as "PM_{10}" standards. The July 18, 1989, submittal also included numerous miscellaneous revisions to Chapter 17–2, Air Pollution, F.A.C. These revisions included additional emission limits, permit exemptions, rule provision clarifications and updated compliance test methods. EPA is not acting on the revisions to Regulation 17–2.510, since this regulation has not yet been approved.

DATES: This action will be effective on April 2, 1990, unless notice is received on or before March 5, 1990, that someone wishes to submit adverse or critical comments. Such notice may be submitted to Douglas Neeley at the EPA Regional Office address listed below. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Douglas Neeley of the EPA Region IV Air Programs Branch at the address given above, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1987 (52 FR 24634), EPA promulgated a new national ambient air quality standard (NAAQS) for particulate matter (PM). The new standard only applies to particles with a nominal aerodynamic diameter of 10 micrometers or less (PM_{10}). The new standard replaces total suspended particulates (TSP) as a NAAQS. Because PM_{10} air quality data was lacking in most areas of the country, EPA could not arbitrarily designate areas as attainment or nonattainment. EPA then developed an analysis using historical ambient TSP data and any available PM_{10} data to classify all counties in the nation into one of three groups based upon the statistical probabilities of not attaining the new PM_{10} standards. EPA has classified the following: (1) Areas with a probability of not attaining the PM_{10} standard of at least 95 percent as "Group I", (2) areas with a probability of not attaining the PM_{10} standard of between 20 and 95 percent as "Group II", and (3) areas with a probability of not attaining the PM_{10} standard of less than 20 percent as "Group III". All areas are currently conducting ambient monitoring to determine whether actual ambient PM_{10} concentrations are above or below the PM_{10} NAAQS.

For Group I areas, a State Implementation Plan (SIP) is required with sufficient PM_{10} control strategies included to demonstrate attainment and

maintenance of the standard. For Group II areas, the state must submit a "committal" SIP that supplements the existing TSP SIP with enforceable commitments. Specific commitments should include plans to collect and analyze PM_{10} ambient air quality data and to report violations to the EPA Region IV Office. For Group III areas, existing SIPs are deemed adequate to protect the NAAQS but the SIP revision must include provisions for Prevention of Significant Deterioration (PSD) and PM_{10} monitoring. A full SIP revision would be required for a Group II or Group III area if a monitoring site records four exceedances of the PM_{10} 24-hour standard over a three year period or less or if the PM_{10} annual arithmetic mean is greater than 50 $\mu g/m^3$ based on three consecutive years of data.

Florida contains no Group I or II areas, therefore, their SIP revision must contain the following: (1) State ambient air quality standards for PM_{10} at least as stringent as the NAAQS; (2) preconstruction review for new or modified sources which would emit significant amounts of either PM or PM_{10} emissions; (3) emergency episode plan to prevent PM_{10} concentrations from reaching the significant harm level of 600 $\mu g/m^3$; (4) ambient PM_{10} monitoring requirements of 40 CFR 58; and (5) requirements contained in 40 CFR 51.322 and 51.323 to report actual emissions of PM_{10} (beginning with emissions for calendar year 1988) for point sources emitting 100 tons per year or more.

SIP Review

On May 19, 1988, Florida submitted a PM_{10} SIP which contained the revisions to its regulation as follows:

1. *17-2.100—Definitions.* Definitions for "Emission", "PM_{10}", and "Total Suspended Particulate" have been established to clarify the rule language in accordance with the intent of the PM_{10} revisions. The definition of "Particulate matter" has been amended to differentiate between particulate matter that is measured in the ambient air and particulate matter that is emitted. The definition of "National Ambient Air Quality Standard" has been amended to refer to 40 CFR part 50 instead of section 109 of the Clean Air Act to account for the addition of PM_{10}. The definition of "Area of Influence" has been amended to account for the establishment of RACT in air quality maintenance areas. The definition of "Significant Impact" has been amended to account for PM_{10} and TSP instead of particulate matter. To include the new definitions in this section, the definitions have been renumbered in several places.

2. *17-2.300—Ambient Air Quality Standards.* The ambient air quality standards have been amended to account for the rescission of the particulate matter standards and the establishment of the PM_{10} Standards.

3. *17-2.310—Maximum Allowable Increases (Prevention of Significant Deterioration Increments).* This section has been revised to specify particulate matter as TSP.

4. *17-2.330—Air Alert, 17-2.340—Air Warning, 17-2.350—Air Emergency.* These sections have been revised to specify the air alert, warning, and emergency levels in terms of PM_{10} instead of particulate matter. The combined sulfur dioxide and particulate matter air alert, warning, and emergency levels have been rescinded to reflect what was presented in 40 CFR part 51, appendix L.

5. *17-2.400—Procedures for Designation and Redesignation of Areas.* This section has been revised to account for the changes in section 17-2.310 which specify particulate matter as TSP.

6. *17-2.410—Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas).* Revisions have been made to retain existing particulate nonattainment areas as TSP nonattainment areas until such date that the U.S. EPA makes effective the designation of these areas to unclassifiable. Space has been reserved for PM_{10} nonattainment areas in the event that such designations occur in the future. This section has been renumbered to account for the revisions.

7. *17-2.420—Designation of Areas Meeting Ambient Air Quality Standards (Attainment Areas).* This section has been revised to specify particulate matter as PM_{10}.

8. *17-2.430—Designation of Areas Which Cannot Be Classified as Attainment or Nonattainment (Unclassifiable Areas).* This revision enables the Department of Environmental Regulation to apply the Prevention of Significant Deterioration Regulations to those areas which are currently designated as nonattainment areas for TSP. Polk and Seminole Counties have been removed from this section since they are not designated as unclassifiable for PM_{10}.

9. *17-2.450—Designation of Prevention of Significant Deterioration (PSD) Areas.* This section is revised to specify particulate matter as TSP.

10. *17-2.460—Designation of Air Quality Maintenance Areas.* The areas which are currently designated as nonattainment for TSP are designated as air quality maintenance areas to ensure that RACT will continue to be applied.

11. *7-2.500—Prevention of Significant Deterioration.* This section is revised to specify actual emissions and the increments for particulate matter as TSP, and to include a significant emission rate and a de minimus ambient impact for PM_{10}. The paragraph pertaining to air quality monitoring data for PSD has been revised to refer to the most recent EPA guideline available.

12. *17-2.510—New Source Review for Nonattainment Areas.* Revisions have been made to specify offsets for particulate matter in terms of TSP and PM_{10}. Offsets for TSP will be a functioning part of the rule. Offsets for PM_{10} will be non-operative, providing that there are no nonattainment designations for PM_{10}. The portion pertaining to unconfined particulate matter has been revised to address PM_{10} at a future date should it become necessary. Regulation 17-2.510 has not been approved as part of the Federally-approved SIP. The revisions to this regulation will be acted on when the entire regulation is approved.

13. *17-2.540—Source Specific New Source Review Requirements.* This section has been revised to specify particulate matter as PM_{10}. Once again, this part of the rule will be non-operative, providing that there are no nonattainment designations for PM_{10}. The wording has also been corrected to account for proposed new or modified sulfur storage and handling facilities which are to be located within, not outside, five kilometers of either a PM_{10} nonattainment areas or a PSD class I area.

14. *17-2.600—Specific Source Emission Limiting Standards.* Revisions have been made to the portion pertaining to sulfur handling such that the particulate matter limitations will continue to apply in the areas which are presently nonattainment for TSP.

15. *17-2.650—Reasonably Available Control Technology (RACT).* Revisions have been made such that RACT for existing sources will continue to be applied in the areas which are presently nonattainment for TSP. The portion addressing RACT for new and modified sources has been rescinded since the areas where this has been applied will have no classification for PM_{10}.

On June 24, 1988, Florida submitted additional information outlining the existing federally approved regulations that Florida, is relying on to ensure attainment of the PM_{10} NAAQs. As a result of EPA's review, several changes to the revised SIP were needed before EPA could approve them. On July 18,

1989 Florida submitted the additional revisions as follows:

1. *Clarification of General Prohibitions—Rules 17–2.100(37), 17–2.300(2), and 17–2.500(1).* To comply with EPA's request, a definition of "cause or contribute to" is added along with amended provisions in Rules 17–2.300(2) and 17–2.500(1) to clarify that any new or modified source would be prohibited if its emissions would result in a violation of an applicable ambient air quality standard.

2. *Correction of PM_{10} Related Provisions—Rules 17–2.100(145), 17–2.410(2), 17–2.540(2), and 17–2.650(2).* Minor corrections are made to PM_{10} related provisions to satisfy EPA requirements for SIP approval. To satisfy the monitoring requirements, Florida revised its monitoring network to include 8 PM_{10} monitoring sites and surrogate monitors at an additional 13 sites. Florida has also committed to meeting the reporting requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM_{10} (beginning with 1988) for point sources emitting 100 tons per year or more.

Designation of Areas for Air Facility Planning Progress: Revision to Section 107 Attainment Status Designation for Florida

Under 107(d) of the Clean Air Act, 42 U.S.C. 7407(d), each state is directed to submit to the Administrator of the EPA a list of NAAQS attainment status designations for all areas within the state. EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 9862). Pursuant to 52 FR 24682 in the July 1, 1987 **Federal Register**, states are encouraged to request the designation of TSP nonattainment areas to unclassifiable at the time the PM_{10} control strategy for the area is submitted. When EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation. Since Florida made revisions to the SIP for particulate matter that enable the State to protect the NAAQS for particulate matter having a nominal aerodynamic diameter of 10 microns (PM_{10}), EPA will redesignate TSP Primary or Secondary nonattainment areas to unclassifiable. All areas currently classified as attainment will remain attainment for TSP.

One significant result of EPA's rulemaking is that states will no longer be required to subject major new and modified sources of particulate matter to the nonattainment requirements under Part D of the Clean Air Act. The nonattainment area NSR requirements contained in paragraph (a) of § 51.165 will not apply to PM_{10}. Furthermore, in light of EPA's deletion of the TSP indicator for the NAAQS, EPA no longer requires states to submit TSP nonattainment area NSR requirements based on Part D of the Clean Air Act.

Periodically Florida amends its air pollution regulations to conform to EPA rule changes and to correct and clarify those regulations needing such. These revisions being approved today were subject to a public hearing on April 26, 1989 and were adopted by the Florida Environmental Regulation Commission on June 19, 1989. The revisions are as follows:

1. *New Exemptions from Permitting Requirements—Rule 17–2.210(3).* Permitting exemptions for boilers are expanded to include larger gas-fired units and others operated only during emergencies. Hot water generators are exempted also. New exemptions are included for auxiliary equipment used by the electric power industry and others, small attainment-area painting facilities, phosphogypsum disposal areas and cooling ponds, small dry cleaning facilities and small degreasing units.

2. *Updating of Air Quality Modeling Provisions—Rule 17–2.260.* Provisions requiring the use of EPA-approved air quality models are updated to reflect the most recent modeling guidelines adopted by the EPA.

3. *Redesignation of Orange County—Rules 17–2.410, 17–2.460(1)(b), and 17–2.510(5).* Orange County's federal redesignation to an ozone air quality maintenance area is reflected in these changes. As discussed earlier in this notice, the revisions to Regulation 17–2.510 will be acted on when the entire regulation is approved.

4. *Reformatting of Emission Limiting and Performance Standards for New Sources—Rules 17–2.600 and 17–2.660.* Language is included to explain that federal new source performance standards are controlling unless the state has a more stringent standard for new sources. Where a state standard is the same or equivalent to a federal standard, the rule language in the section or new sources is replaced by appropriate reference to the federal code and section 17–2.660 wherein the federal new source standards are adopted by reference.

5. *Removal of Ringelmann Chart Limits—Rule 17–2.600.* Consistent with EPA's current emission standards, the Ringelmann Chart limits are stricken, leaving only the opacity limits for visible emissions.

6. *Conditional Visible Emission Limits for Kraft Recovery Furnaces—Rule 17–2.600(4)(a).* A condition is added to this subsection making visible emission limits non-applicable if the reading is substantially affected by plume mixing or condensation. In such cases, compliance will be established by the particulate matter emission test results.

7. *Reformatting of Emissions Limiting and Performance Standards—Rule 17–2.600.* Certain subsections are reformatted for consistency by addressing "existing plants" first, followed by standards for "new plants".

8. *Revision of Maximum Opacity Limits for Boilers—Rules 17–2.600 (5) and (6).* A facility may meet the existing maximum limit of 40 percent opacity for two minutes per hour or a new limit of 27 percent opacity for six minutes per hour which is consistent with the EPA's standards. The purpose of the change is to bring as many existing plants as possible under the EPA standard while allowing older units to have brief periods of higher opacity. No significant emission change is expected from this revision.

9. *Revision of "Averaging Times" for Boiler Emissions—Rule 17–2.600(5).* The maximum "two-hour average" provision of the particulate matter, sulfur dioxide, and nitrogen oxides limits for boilers over 250 million BTU/hr is replaced with a phrase clarifying that compliance will be established by applicable test methods.

10. *New Provisions for Dry Cleaning Facilities—Rule 17–2.600(12).* New provisions require monthly records of solvent consumption. The applicability provisions are modified to apply to perchloroethylene facilities located outside of ozone nonattainment areas and having dryer capacity of 10 pounds or more. Petroleum solvent facilities must comply with the regulations depending on their location and annual solvent consumption instead of dryer capacity. The purpose of these changes is to make the regulations responsive to solvent consumption instead of dryer capacity, since VOC emissions equate directly with actual gallons consumed. No significant emission change is expected from this revision.

11. *Emission Limits for Concrete Batching Plants—Rule 17–2.600(13).* A visible emission limit for concrete batching plants is added in view of the substantial number of these facilities in Florida. EPA grant conditions required establishing a standard for at least one industry category for which there are no current specific visible emission limits.

12. *Mathematical Corrections to Process Weight Table—Table 610–1.* Corrections are made to the process

weight table where obvious typographical or rounding errors exist.

13. *Removal of Redundant Language for Nonattainment Area Particulate Matter Exemptions—Rule 17-2.650(2)(a)3.* Under the particulate matter reasonably available control technology applicability provisions, subparagraph 3. is deleted since it is redundant with respect to exemptions 2. and 4. listed in the following paragraph (b).

14. *Reduced Opacity Observation Period for Batch Processes—Rule 17-2.700(1)(d)1.b.* The 12-minute minimum observation period is deleted since batch cycle time could be less than 12 minutes.

15. *Revision of Annual Compliance Testing Requirements—Rule 17-2.700(2)(a)2. and 17-2.700(2)(a)4.* Rule 17-2.700(2)(a)2. presently requires annual compliance testing under soot blowing conditions regardless of operating time and regardless of whether or not soot blowing is done. The revision makes such compliance testing mandatory only in a year during which soot blowing is done and only if the unit operates 400 hours or more during the year.

16. *Updating of EPA Test Methods—Rule 17-2.700(6)(b).* There are a number of new or revised EPA test methods that are adopted by reference. Included are the new instrument methods for O_2, CO_2, SO_2, NO_x in boiler stacks and TRS from kraft pulp mills. Others include the new ultraviolet, colorimetric and chromatograph methods for NO_x concentrations, and the addition of appendix F of 40 CFR part 60 (Quality Assurance Requirements for Continuous Emission Monitoring Systems).

17. *Provision for SO_2 Monitoring by Fuel Sulfur Analysis—Rule 17-2.710(1)(a)2.* To coincide with federal rule 40 CFR 60.45(b)(2), a continuous monitoring system for SO_2 will not be required where there is no desulfurization device and the fuel sulfur content is monitored by sampling and analysis.

18. *Correction of Typographical Errors—Rules 17-2.210(1), 17-2.340(1)(c), 17-2.420(3)-(5), 17-2.430(2).* Miscellaneous typographical errors are corrected. EPA has reviewed these regulations and has concluded that the approval will not jeopardize attainment or maintenance of the National Ambient Air Quality Standards.

Action

EPA approves the above revised PM_{10} SIP regulations submitted by the Florida Department of Environmental Regulation on May 19, 1988 and July 18, 1989, and the miscellaneous revisions submitted on July 18, 1989. EPA also approves Florida's request to redesignate the nonattainment TSP areas in Jacksonville and Hillsborough County to unclassifiable. The areas classified as attainment will remain attainment. EPA is not taking action on the revisions to 17-2.510 at this time. These revisions will be acted on when the submittal for 17-2.510 is acted on.

The public is advised that this action will be effective 60 days from today. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposed action and establishing a comment period.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget exempted Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

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

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

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

List of Subjects

40 CFR Part 52

Air Pollution Control, Ozone, Sulfur Oxides, Nitrogen dioxide, Lead, Particulate Matter, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: December 8, 1989.

Lee A. DeHihns,

Acting Regional Administrator.

40 CFR Part 52, subpart fK, is amended as follows:

PART 52—[AMENDED]

Subpart K—Florida

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.520 is amended by adding paragraph [c](66) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(66) PM_{10} revisions for the Florida State Implementation FPlan were submitted on May 19, 1988 and July 18, 1989, by the Florida Department of Environmental Regulation. Miscellaneous corrective revisions were also submitted by the Florida Department of Environmental Regulation on July 18, 1989.

(i) Incorporation by reference.

(A) Revised regulations which became state-effective on May 30, 1988:

17-2.100—Definitions: (16)(a), (17), (81), (143), (173)(b), (202)

17-2.300—Ambient Air Quality Standards: (3)(b)

17-2.310—Maximum Allowable Increases (Prevention of Significant Deterioration Increments): (1)(a) and (2)(a)

17-2.330—Air Alert: (1)(b) thru (f)

17-2.340—Air Warning: (1)(b)

17-2.350—Air Emergency: (1) Introductory paragraph, (1)(b) thru (e)

17-2.400—Procedures for Designation and Redesignation of Areas: (1)(b)

17-2.410—Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas): (2)(b), (3) thru (7)

17-2.420—Designation of Areas Meeting Ambient Air Quality Standards (Attainment Areas): (2)

17-2.430—Designation of Areas Which Cannot Be Classified As Attainment or Nonattainment (Unclassifiable Areas): (1)

17-2.450—Designation of Prevention of Significant Deterioration (PSD) Areas: (1) Introductory paragraph and subparagraph (a)

17-2.460—Designation of Air Quality Maintenance Areas: (4)

17-2.500—Prevention of Significant Deterioration: (2)(e)4.b., (4)(e)3., (5)(f)3, Table 500-2 and Table 500-3

17-2.600—Specific Source Emission Limiting Standards: (11)(a)3., 7., 9., (11)(b)3.a., (11)(b)5.

(B) Revised regulations which became state-effective on July 9, 1989:

17-2.100—Definitions: (37) and (145)
17-2.210—Permits Required: (1) and (3)
17-2.260—Air Quality Models
17-2.300—Ambient Air Quality Standards: (2)
17-2.340—Air Warning: (1)(c)
17-2.410—Designation of Areas Not Meeting Ambient Air Quality Standards (Nonattainment Areas): (1) and (2)(a)
17-2.420—Designation of Areas Meeting Ambient Air Quality Standards (Attainment Areas): (3) thru (5)
17-2.430—Designation of Areas Which Cannot Be Classified As Attainment or Nonattainment (Unclassifiable Areas): (2) Introductory Paragraph
17-2.460—Designation of Air Quality Maintenance Areas: (1) and (2)
17-2.500—Prevention of Significant Deterioration: (1)(a)—(c)
17-2.520—Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements.: Title
17-2.540—Source Specific New Source Review Requirements: (2)(a)
17-2.600—Specific Emission Limiting and Performance Standards: Title, Introductory paragraph, (1)(a)1., (2)(a)2.a.; (2)(b)1.; (4)(b)2.; (5)(a)1., 2., 3a.(i), and 4. Introductory paragraph; (5)(b); (6); (12)(a)1.; (12)(a)7.; (12)(b); (12)(c) Introductory paragraph; (12)(c)4., (13); and (14)
17-2.610—General Particulate Emission Limiting Standards: Table 610-1 and (3)(c)7.
17-2.650—Reasonably Available Control Technology (RACT): (1)(c)3.a.(ii) and (iii); (1)(f) introductory paragraph; (1)(f)10.c.(i) and (iv); (2)(a)1., (b), (c) Introductory paragraph, (c)1.b. and c., (c)2.b.(ii), (c)3.b.(ii), (c)4.b, (c)5.a. Introductory paragraph, (c)5.a.iv. and v., (c)5.b.(i)-(iv), (c)6.b.(i) and (iii), (c)7.b.(i) and (ii), (c)8. thru 10., (c)11.a. Introductory paragraph, (c)11.a.(vi), (c)11.b., and (c)12.; (2)(d)2.a., b. and c.
17-2.660—Standards of Performance for New Stationary Sources (NSPS): (2)(b)
17-2.700—Stationary Point Source Emissions Test Procedures: (1)(b) Introductory paragraph; (1)(d)1.b.(i), (2)(a)2., (2)(a)4. thru 9.; Table 700-1; (4)(c)1.c.(i) and (ii); (6)(a)1.a., (b)1., (b)2.a. and b., (b)3.a. and b., (b)5., (b)6.a. thru c., (b)7.b. thru e., (b)10., (b)(12), (b)16.b. and c., (b)18 thru 22, (b)24. thru 31., and (c)6.d.
17-2.710—Continuous Monitoring Requirements: (1)(a)2.
17-2.960—Compliance Schedules for Specific Source Emission Limiting Standards: (1)(c) and (d) Introductory paragraph; (1)(e).

(ii) Additional material.

(A) Letter of May 19, 1988, from the Florida Department of Environmental Regulation (FDER) submitting the SIP revisions.

(B) Letter of July 18, 1989, from the FDER submitting additional SIP revisions.

40 CFR part 81, subpart C, is amended as follows:

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for subpart C continues to read as follows:

Authority: Secs. 107, 301, Clean Air Act, as amended (42 U.S.C. 7401-7601).

2. Section 81.310 is amended by revising the Florida TSP table to read as follows:

§ 81.310 Florida TSP.

* * * * *

FLORIDA TSP

Designated area—does not meet primary standards	Does not meet secondary standard	Cannot be classified	Better than national standards
The downtown Jacksonville area located south and then west along the St. John's River from its confluence with Long Branch Creek, to Main Street north along Main Street to Eighth Street; east along Evergreen Avenue to Long Branch Creek; and east along Long Branch Creek to the St. John's River.		X	
Seminole County		X [1]	
Polk County		X [1]	
That portion of Hillsborough County which falls within the area of the circle having a centerpoint at the intersection of US 41 and State Road 60 and a radius of 12 km.		X	
Rest of State			X [1]

[1] EPA designation only.

[FR Doc. 90-2226 Filed 1-31-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42012G; FRL 3708-3]

RIN 2070-AB97

Diethylenetriamine (DETA); Amendments to Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the final test rule for diethylenetriamine (DETA) in 40 CFR 799.1575 by rescinding the requirement for dermal absorption testing and by extending the deadline for submission of the final report on the chemical fate testing. The extension requires submission of the final report 12 months after the effective date of this amendment.

DATES: This amendment shall become effective on March 19, 1990. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern (daylight or standard as appropriate) time on February 15, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is amending the final rule for DETA by eliminating the dermal absorption testing and by extending the deadline for the chemical fate testing.

I. Background

In the **Federal Register** of June 28, 1989 (54 FR 27189), EPA proposed rescinding requirements for dermal absorption testing of DETA because no significant toxic effects were observed in the required 90-day subchronic toxicity study, and the available acute toxicity data indicate comparable toxicity from dermal and oral routes of administration. EPA also proposed granting the sponsor's request for an additional 1-year extension of the reporting requirements for the chemical fate test due to difficulties in obtaining radiolabelled DETA. The final test rule for DETA which EPA is now amending is codified in 40 CFR 799.1575.

II. Public Comments

EPA received comments from the Diethylenetriamine Producers/Importers Alliance (DPIA).

Comment. DPIA believes the proposal to extend chemical fate testing for DETA is warranted. DPIA stated that although the test sponsor, Dow Chemical Company (Dow), has obtained test material of sufficient purity, they continue to have difficulties with the analytical methodology. DPIA stated that Dow has not been able to reproduce test results at the required sensitivity (100 ppm) using thermal energy activation analysis.

Response. EPA believes Dow will be able to resolve these difficulties using thermal energy activation analysis at the required level of sensitivity and complete the study within the extended reporting time.

Comment. DPIA also agrees with EPA that dermal absorption testing is no longer warranted since information from a 90-day subchronic dietary study indicates that DETA induced little or no toxicity and therefore toxicity is not expected to vary with route of exposure.

Response. Although EPA has decided dermal absorption testing is not necessary for DETA, an unremarkable subchronic study does not necessarily negate the need for dermal absorption testing of other chemicals in other cases. The need for dermal absorption testing is decided on a case by case basis.

III. Testing Requirements

The dermal absorption testing requirement at 40 CFR 799.1575(c)(4) has been deleted.

IV. Reporting Requirements

The final report for the chemical fate test has been extended from March 19, 1987, to 1 year from March 19, 1990.

V. Economic Analysis

Eliminating the dermal absorption test will reduce testing costs by $15,400 to $46,000. Therefore, this amendment should not cause adverse economic impact.

VI. Rulemaking Record

EPA has established a record for this rulemaking (Docket Number OPTS–42012G). This record contains the basic information considered by EPA in developing this rule and appropriate Federal Register notices.

A. Supporting Documentation

Supporting documentation was provided in the proposed rule (54 FR 27189).

B. References

DPIA. Diethylenetriamine Producers/Importers Alliance. Letter to the TSCA Public Docket Office (TS–793), Office of Pesticides and Toxic Substances (OPTS), U.S. Environmental Protection Agency (EPA). (July 28, 1989).

The record for this rulemaking is available for inspection in the OPTS Reading Room, G–004, NE Mall, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays. EPA will supplement the record as necessary.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA judged that the final Phase II test rule for DETA (May 23, 1985; 50 FR 21398) was not "major" and therefore was not subject to the requirement of a Regulatory Impact Analysis. The modifications to the rule do not alter this determination.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA certified that significant impact on a substantial number of small businesses. The modifications do not alter this certification.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB Control number 2070–0033.

Public reporting burden for this collection of information is expected to be reduced approximately 159 hours by rescinding the dermal absorption test. However, extending the reporting requirement for the chemical fate test will add to the public reporting burden by an estimated 8 hours of time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Chemical export, Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Testing.

Dated: January 21, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.1575 is amended by removing paragraph (c)(4) and revising paragraphs (d)(3) and (f) to read as follows:

§ 799.1575 Diethylenetriamine (DETA).

* * * * *

(d) * * *

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to EPA within 12 months of the effective date specified in paragraph (f) of this section.

* * * * *

(f) *Effective dates.* (1) The effective date of 40 CFR 799.1575, final Phase II rule for DETA, is March 19, 1987, except for paragraph (d)(3) which is effective March 19, 1990.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on the effective date of the final rule.

* * * * *

[FR Doc. 90–2358 Filed 1–31–90; 8:45 am]
BILLING CODE 6560–50–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050–0019]

Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) specified for pollock for the first quarter in the combined Western and Central Regulatory Area outside of the Shelikof Strait District of the Gulf of Alaska has been reached. The Secretary

of Commerce (Secretary) is prohibiting further directed fishing for pollock in the Western/Central Gulf outside of the Shelikof Strait District from 12:00 noon, Alaska Standard Time, on January 29, 1990, through 11:59 a.m., Alaska Daylight Time (a.d.t.), on April 1, 1990. The directed pollock fishery in the Western/Central Regulatory Area will reopen 12 noon, a.d.t. on April 1, 1990.

DATES: Effective from 12:00 noon on January 29, 1990, Alaska Standard Time through 11:59 a.m., Alaska Daylight Time April 1, 1990.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802.

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

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the Exclusive Economic Zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR part 672. Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000–800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catch (TAC) for each target groundfish species and species group are specified annually. For 1990, TACs were established for each of the target groundfish species and species groups and apportioned among the regulatory areas and districts.

An overall TAC for pollock equal to 70,000 mt has been specified for the combined Western/Central Regulatory area for the 1990 fishing year. For purposes of managing pollock, the Secretary adjusted the TAC under authority of § 672.22 of the regulations such that 25 percent of the TAC (17,500 mt), is apportioned to the Western/Central Gulf Area in each quarter of the fishing year. In the first quarter, 6,250 mt is apportioned to the Shelikof Strait District and 11,250 mt is apportioned to the remainder of the combined Western/Central Regulatory area. The amount allotted to the combined Western/Central Regulatory area, 11,250 mt, has been reached.

Therefore, pursuant to § 672.20(c)(2), the Secretary is prohibiting further directed fishing for pollock in the combined Western/Central Regulatory area outside of the Shelikof Strait District effective 12:00 noon, Alaska Standard Time January 29, 1990. Any catches of pollock after that date and before 12:00 noon Alaska Daylight Time April 1, 1990, may be retained incidentally in other directed groundfish fisheries.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, reporting and recordkeeping requirements.

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

Dated: January 26, 1990.

David S. Crestin,

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

[FR Doc. 90–2288 Filed 1–29–90; 11:04 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 22
Thursday, February 1, 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 HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AC59

Federal Old-Age Survivors, and Disability Insurance Supplemental Security Income for the Aged, Blind and Disabled; Representation of Parties—Suspension and Disqualification of Representatives

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to amend the regulations to provide that the Social Security Administration's (SSA's) Associate Commissioner for Hearings and Appeals, or his or her designee, will initiate proceedings to suspend or disqualify persons who represent Social Security claimants in dealings with SSA when it appears that the representative has violated one of our rules. The proposed amendment also requires that a panel of three Appeals Council members, rather than a single member, will consider a request for review of an administrative law judge's (ALJ's) decision on the issue of suspension or disqualification of a representative.

DATES: To be sure your comments are considered, we must receive them no later than April 2, 1990.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965–1769.

SUPPLEMENTARY INFORMATION: The regulations currently in effect provide that if it appears that a representative has violated one of our rules, the Deputy Commissioner (Operations) or the Director (or Deputy Director), Office of Insurance Programs, will investigate alleged violations and prepare a notice containing a statement of charges that constitutes the basis for a proceeding against the representative. We believe, however, that the Office of Hearings and Appeals should assume this responsibility because that Office has primary contact with representatives who act on behalf of claimants before SSA. Our experience demonstrates that most claimants do not obtain a representative until they request a hearing before an ALJ or request review of the ALJ's decision. Accordingly, the Office of Hearings and Appeals is in a better position to discern whether a representative may be in violation of our rules and to initiate proceedings when there is an apparent violation. The proposed regulations assign these duties to the Office of Hearings and Appeals and update the organizational designations that appear in the current regulations.

Under the procedures in the proposed regulations, we will be able to process complaints involving representatives more efficiently, while still preserving all of the rights and protections due interested parties. The new process will eliminate the time-consuming exchanges of communications among components of SSA that are presently necessary to develop and process complaints. The proposed changes will allow the Office of Hearings and Appeals to investigate alleged violations and, without further referral, to initiate appropriate actions. If the inquiry into the allegations produces information which on its face shows a probable violation of our rules, the Associate Commissioner for Hearings and Appeals will issue a notice of charges against the representative in accordance with existing procedures. If the representative is unable to provide an answer sufficient to explain or overcome the evidence, the Associate Commissioner will refer the matter for a hearing before an ALJ on the merits of the charges.

The hearing on the charges will still be conducted by an ALJ who, as the designated hearing officer, is not under the control or direction of any SSA official in deciding the matters at issue. An ALJ has qualified independence in hearing and deciding matters submitted for adjudication, as guaranteed by the various provisions of the Administrative Procedure Act as codified in title 5 of the United States Code. The representative will also continue to have the right to request review by the Appeals Council of the ALJ's decision. In this regard, we propose to have requests for Appeals Council review considered by a three-member panel of Appeals Council members which shall not include the Associate Commissioner for Hearings and Appeals, who also chairs the Appeals Council. By the nature of their direct delegation of authority from the Secretary, Appeals Council members are free from agency control and direction in their decision making function. Review by a three-member panel will ensure that each request for review is given full consideration.

Consistent with current SSA practices, any employee assigned to investigate allegations of violations or act as the Associate Commissioner's representative in filing and prosecuting the notice of charges will not participate in any decision or administrative review of the decision issued as a result of the action, except as a witness or an advocate during the course of the proceedings. As is presently the case, those employees assigned to perform investigative and prosecutorial functions will not engage in confidential communications relevant to the merits of the proceedings with the ALJ or other employees involved in the decisional process. In accordance with due process requirements, all communications relevant to the merits of the case will be made part of the record of the hearing on the matters at issue.

The proposed regulations recognize the possibility of future changes in organizational structure or designation by allowing the Associate Commissioner for Hearings and Appeals to designate an individual to perform the function as his or her alternate or replacement.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of these regulations is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.773 and 13.774, Medicare; 13.802-13.805 Social Security; and 13.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

20 CFR Part 416

Administrative practice and procedures; Aged, Blind, Disability benefits; Public assistance programs; Supplemental Security Income (SSI).

Dated: November 7, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 12, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart R of part 404 and subpart O of part 416 of chapter III of title 20 of the Code of Federal; Regulations are proposed to be amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950——)

1. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 406, and 1302.

2. The introductory language in § 404.1745 is revised to read as follows:

§ 404.1745 What happens to a representative who breaks the rules.

The Associate Commissioner for Hearings and Appeals, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

* * * * *

3. Paragraphs (a), (d) and (e)(2) of § 404.1750 are revised to read as follows:

§ 404.1750 Notice of charges against a representative.

(a) The Associate Commissioner for Hearings and Appeals, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Associate Commissioner for Hearings and Appeals, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

* * * * *

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

§ 404.1760 [Removed]

4. Section 404.1760 is removed.

5. In § 404.1765, paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

§ 404.1765 Hearing on charges.

(a) *Scheduling the hearing.* If we do not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

* * * * *

6. In § 404.1765, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

§ 404.1765 Hearing on charges.

* * * * *

(b)(1) *Hearings officer.* The Associate Commissioner for Hearings and Appeals, or his or ner designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known addresses, at least 20 days before the date set for the hearing.

* * * * *

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Associate Commissioner for Hearings and Appeals, or his or her designee, shall also be a party to the hearing.

7. Paragraph (a)(3) of § 404.1770 is revised to read as follows:

§ 404.1770 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

8. A new § 404.1776 is added to read as follows:

§ 404.1776 Assignment of request for review of the hearing officer's decision.

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the Appeals Council all of whom shall be members other than the Chairman of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for review. Matters other than a final disposition of the request for review may be disposed of by the member designated chairman of the panel.

9. Paragraph (e) of § 404.1790 is revised to read as follows:

§ 404.1790 Appeals Council's decision.

* * * * *

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 404.1799 are revised to read as follows:

§ 404.1799 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * * *

(c) The Appeals Council shall allow the Associate Commissioner for Hearings and Appeals, upon notification of receipt of the request, 30 days in which to present a written report of any experience with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

* * * * *

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Associate Commissioner for Hearings and Appeals.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

1. The authority citation for Subpart O of Part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(d)(2), Social Security Act; 42 U.S.C. 1302 and 1383(d).

2. The introductory language in § 416.1545 is revised to read as follows:

§ 416.1545 What happens to a representative who breaks the rules.

The Associate Commissioner for Hearings and Appeals, or his or her designee, may begin proceedings to suspend or disqualify a person from acting as a representative in dealings with us if it appears that he or she—

* * * * *

3. Paragraphs (a), (d) and (e)(2) of § 416.1550 are revised to read as follows:

§ 416.1550 Notice of charges against a representative.

(a) The Associate Commissioner for Hearings and Appeals, or his or her designee, will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the representative.

* * * * *

(d) The Associate Commissioner for Hearings and Appeals, or his or her designee, may extend the 30-day period for good cause.

(e) The representative must—

* * * * *

(2) File the answer with the Social Security Administration, Office of Hearings and Appeals, Attention: Special Counsel Staff, within the 30-day time period.

§ 416.1560 [Removed]

4. Section 416.1560 is removed.

5. In § 416.1565 paragraphs (a) through (n) are redesignated as paragraphs (b) through (o), and a new paragraph (a) is added to read as follows:

§ 416.1565 Hearing on charges.

(a) *Scheduling the hearing.* If we do not take action to withdraw the charges within 15 days after the date on which the representative filed an answer, we will hold a hearing and make a decision on the charges.

6. In § 416.1565, the paragraphs newly redesignated as (b)(1), (c) and (e) are revised to read as follows:

§ 416.1565 Hearing on charges.

* * * * *

(b)(1) *Hearing officer.* The Associate Commissioner for Hearings and Appeals, or his or her designee, shall assign an administrative law judge, designated to act as a hearing officer, to hold a hearing on the charges.

* * * * *

(c) *Time and place of hearing.* The hearing officer shall mail the parties a written notice of the hearing at their last known address, at least 20 days before the date set for the hearing.

* * * * *

(e) *Parties.* The representative against whom charges have been made is a party to the hearing. The Associate Commissioner for Hearings and Appeals, or his or her designee, shall also be a party to the hearing.

7. Paragraph (a)(3) of § 416.1570 is revised to read as follows:

§ 416.1570 Decision by hearing officer.

(a) * * *

(3) The hearing officer shall mail a copy of the decision to the parties at their last known addresses. The notice will inform the parties of the right to request the Appeals Council to review the decision.

* * * * *

8. A new § 416.1576 is added to read as follows:

§ 416.1576 Assignment of request for review of the hearing officer's decision.

Upon receipt of a request for review of the hearing officer's decision, the matter will be assigned to a panel consisting of three members of the Appeals Council all of whom shall be members other than the Chairman of the Appeals Council. The panel shall jointly consider and rule by majority opinion on the request for review of the hearing officer's decision, including a determination to dismiss the request for reveiw. Matters other than a final disposition of the request for review may be disposed of by the member designated chairman of the panel

9. Paragraph (e) of § 416.1590 is revised to read as follows.

§ 416.1590 Appeals Council's decision.

* * * * *

(e) The Appeals Council shall make its decision in writing and shall mail a copy of the decision to the parties at their last known addresses.

10. Paragraphs (c) and (e) of § 416.1599 are revised to read as follows:

§ 416.1599 Reinstatement after suspension or disqualification—period of suspension not expired.

* * * * *

(c) The Appeals Council shall allow the Associate Commissioner for Hearings and Appeals, upon notification of receipt of the request, 30 days in which to present a written report of any experiences with the suspended or disqualified person subsequent to that person's suspension or disqualification. The Appeals Council shall make available to the suspended or disqualified person a copy of the report.

* * * * *

(e) The Appeals Council shall mail a notice of its decision on the request to the suspended or disqualified person. It shall also mail a copy to the Associate Commissioner for Hearings and Appeals.

[FR Doc. 90-2124 Filed 1-31-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-060]

RIN 1218-AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

ACTION: Proposed rule; notice of informal public hearing; reopening written comment period.

SUMMARY: This notice schedules an informal public hearing concerning the notice of proposed rulemaking which OSHA issued on August 16, 1989 (54 FR 33832) on personal protective equipment (PPE) for General Industry. This notice also reopens the comment period for written responses to the proposed rule

DATES: The informal public hearing will begin at 9:30 a.m. on April 3, 1990 and at 9:00 a.m. on any succeeding day. A tentative schedule of appearances will be prepared and distributed to parties who have submitted notices of intention to appear, so parties will know when issues which concern them are likely to be raised at the hearing.

Notices of intention to appear at the informal public hearing must be postmarked by March 13, 1990. Testimony and all evidence which will be offered into the hearing record must be postmarked by March 20, 1990. Written comments on the proposed rule must be postmarked by March 20, 1990.

ADDRESSES: Four copies of the notice of intention to appear, testimony and

documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8615.

Written comments on the proposed standard should be sent, in quadruplicate, to the Docket Officer, Docket No. S–060, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210.

The location of the informal public hearing is the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Hearing: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8615. For additional information on how to submit notices of intention to appear, see the section on public participation, below.

Proposal and Hearing Issues: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8151.

SUPPLEMENTARY INFORMATION: On August 16, 1989, OSHA published a Notice of Proposed Rulemaking (NPRM) which proposed to revise the safety standards in 29 CFR part 1910 for eye and face protection (§ 1910.133), head protection (§ 1910.135), and foot protection (§ 1910.136). The proposals would also revise the general requirements for PPE (§ 1910.132) by adding provisions which (1) require employers to select appropriate PPE based on the hazard confronted and to ensure that employees who obtain their own PPE follow the employer's selection decisions (proposed paragraph (d)); (2) prohibit the use of defective or damaged PPE (proposed paragraph (e)); and (3) require that employees be trained in the proper use of their PPE (proposed paragraph (f)). The NPRM set a period, which ended on October 16, 1989, during which interested persons could comment on the proposal and request a hearing. OSHA has received several requests for the convening of an informal public hearing (e.g. Exs. 3–48, 3–88, 3–93 and 3–114). The Agency has determined that those comments and hearing requests raise issues and concerns which should be addressed through an informal public hearing. Therefore, pursuant to section 6(b)(3) of the OSH Act, OSHA has scheduled an informal public hearing, to begin on April 3, 1990, in Washington, DC.

In addition, OSHA had decided to reopen the written comment period for this rulemaking. This will enable interested persons to submit information and suggestions regarding the NPRM, the issues raised in this hearing notice and other materials which are already part of the rulemaking record, without the need to participate in the informal hearing.

Through this hearing, the Agency expects to obtain testimony and other information pertinent to the issues which are raised in the hearing requests, in the notices of intention to appear, and at OSHA's initiative. In particular, OSHA solicits testimony, with supporting information, on the issues presented below.

Issue #1: Marking of Eye and Face Protection

OSHA has proposed to delete the requirement in existing § 1910.133(a)(4) for marking of eye and face protection "to facilitate identification only of the manufacturer", because the Agency believes that the marking "does not add to or detract from the safety afforded by the protector" (54 FR at 33836). Several commenters (Exs. 3–28, 3–60, 3–74 and 3–75) have suggested that OSHA retain that provision, in order to maximize accountability for any defects in equipment used to protect the eye or face. In addition, one commenter (Ex. 3–78) requests that OSHA "require some identifying marking of OSHA approved safety eye wear * * *" Another commenter (Ex. 3–50) agreed with the assessment that any such marking "does not add or detract from the safety afforded by the protector", but noted that the marking does inform users that the equipment in question has met certain testing standards. Yet another commenter (Ex. 3–92) agreed with OSHA's assessment, but suggested that the Agency require markings to indicate that the product has passed the test for third-party certification. OSHA solicits testimony, with supporting information, regarding the utility of the marking currently required on eye and face protectors. What is the safety and health benefit from compliance with the current requirement (§ 1910.133(a)(4))? How would the proposed deletion affect manufacturers' willingness to label eye and face protectors?

Issue #2: Third Party Certification

In the NPRM, OSHA solicited comments on whether or not the Agency should require third party certification of PPE. OSHA would consider promulgating such a provision so employers would be responsible for ensuring that PPE used by their employees meets the design and test criteria specified by this proposed rule. OSHA believes that this would increase confidence in the equipment and, as a consequence, could increase the use of PPE. OSHA has received a wide range of comments regarding this issue. For example, manufacturers of prescription lenses for eyewear have stated (Exs. 3–71, 3–93 and 3–115) that third party certification of their products would be inappropriate and excessively burdensome because each set of prescription lenses is unique. Some other commenters (e.g. Exs. 3–2, 3–21, 3–46, 3–62, 3–64 and 3–68) opposed third party certification because of concern about the costs imposed. Many other commenters (e.g. Exs. 3–3, 3–10, 3–15, 3–16, 3–25, 3–44 and 3–57) suggested that OSHA require third party certification for PPE (without specifically mentioning prescription eyewear), noting that the certification programs conducted by organizations such as the Safety Equipment Institute would provide appropriate models for compliance with such a requirement.

OSHA solicits testimony, with supporting information, regarding the extent to which third party certification of the PPE covered by this proposal would be appropriate. In addition, the Agency requests information and recommendations on the criteria which should be established for implementation of third party certification programs. What additional requirements, if any, distinct from those criteria which appear in the pertinent consensus standards, should OSHA set for PPE which is subject to third party certification? What are the anticipated costs and benefits of certification programs? Please submit information, including documentary evidence where available, regarding any third party certification programs which have been implemented and any experience with those programs.

Issue #3: Use of Photochromic Lenses

Proposed § 1910.133(a)(3) prohibits the use of protective eyewear with tinted or variable tinted (photochromic) lenses in situations where an employee using eyewear passes from a brightly lighted area (such as outdoors) into a dimly lighted work area (such as a warehouse). The Agency is concerned, for example, that a fork-lift driver wearing eye protection with photochromic lenses could have an accident when driving from outdoors to the interior of a warehouse because the

tint in the lenses would prevent detection and avoidance of hazards. The eyewear industry has noted (Exs. 3–55, 3–71 and 3–115) that the proposed prohibition is vague and overly restrictive and, apparently, conflicts with the applicable provision which appears in the latest edition of the pertinent consenses standard, ANSI Z87.1–1989, section 6.5 (which leaves a decision on the use of photochromic lenses to the discretion of the employer). OSHA solicits testimony, with supporting information, on the extent to which the use of photochromic lenses should be limited. Are there situations where no limitation on use is necessary? What would be the anticipated impacts (such as costs, benefits or changes in work practices) if OSHA promulgated the proposed language?

Issue #4: Training in Proper Use of PPE

Proposed § 1910.132(f) requires that employees be trained in the proper use of their PPE. Several commenters (e.g. Exs. 3–49, 3–50 and 3–59) have suggested that the proposed training requirement be more detailed, because employers need guidance regarding how to train employees. In particular, some commenters (Exs. 3–70, 3–86 and 3–97) recommend that OSHA promulgate training requirements similar to those the Agency adopted in § 1910.120, "Hazardous Waste Operations and Emergency Response." OSHA solicits testimony, with supporting information, on the need for additional training requirements. What additional guidance do employers need in order to train employees? Should such guidance appear in the general PPE requirements (§ 1910.132) or in the provisions for specific types of PPE (eye and face, head and foot protection)? What criteria should be set for determining if an employee has successfully completed training? What requirements should OSHA set for retraining employees in the proper use of PPE? How much time is needed to train employees in the use of PPE? What recordkeeping is necessary for training activities? What are the known or anticipated impacts, such as costs and benefits, of training programs? Please submit copies of any training programs which have been implemented and information on experience with those programs.

Issue #5: Need for Additional Regulation of PPE

Existing § 1910.132, General requirements, provides the only guidance regarding the proper selection, use and maintenance of protective clothing (such as gloves) and protective shields and barriers. OSHA is considering the appropriateness of promulgating regulations which cover certain PPE, such as gloves, in more detail. OSHA has received comments requesting that the Agency initiate regulatory action to set more specific requirements for hand and skin protection (Ex. 3–1) and gloves (Ex. 3–114). The Agency solicits testimony, with supporting information, regarding the need for additional regulation of protective clothing (such as gloves), and shields and barriers. Please submit information on any industry standards or consensus standards which provide guidance to employers with respect to employees' use of use protective clothing, shields or barriers. The Agency also requests information on the availability of such PPE. What guidance do manufacturers already provide regarding proper use of their PPE products? What would be the anticipated impact (costs, benefits and changes in work practices) that would result from expanding the existing provisions to include additional regulation of protective clothing (such as gloves), and shields and barriers?

As a related matter, OSHA has received comments which suggest that the Agency expand its eye and face protection requirements to cover contact lenses (Ex. 3–1) and low-risk eye protection (Ex. 3–41). Also, several commenters suggested that OSHA set requirements for bump caps (Exs. 3–28, 3–37 and 3–58), while several other commenters (Exs. 3–65, 3–68 and 3–75) opposed any such additional requirements. The Agency solicits testimony, with supporting information, regarding the need for additional provisions which address contact lenses, low-risk eye protection and bump caps. What, if any, specific provisions should OSHA promulgate to cover that equipment? What are the anticipated impacts (such as costs, benefits and changes in work practices) that would result if OSHA promulgated such requirements?

Public Participation-Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to present oral testimony concerning the issues raised by the proposed standard, including economic and environmental impacts, will be provided at an informal public hearing scheduled to begin at 9:30 a.m. at the place and on the date as follows:

Washington, DC: April 3, 1990. The Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Intention to Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before March 13, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket S–060, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8615. A notice of intention to appear also may be transmitted by facsimile to (202) 523–5046 or (for FTS) to 8–523–5046, provided the original and 4 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N–2625, telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for the presentation;

(4) The specific issues that will be addressed;

(5) A statement of the position that will be taken with respect to each issue addressed; and

(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by March 20, 1990. That material will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on April 3, 1990. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in type. The legislative intent, in essence, is for OSHA to provide interested persons with an opportunity to make effective to oral presentations which proceed expeditiously, in the absence of procedural restraints which might unduly impede or protract the rulemaking process.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;

(2) To dispose of procedural requests, objections and comparable matters;

(3) To confine the presentations to the matters pertinent to the issues raised;

(4) To regulate the conduct of those present at the hearing by appropriate means;

(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and

(6) In the Judge's discretion, to keep the record open for a reasonable, stated time (the post hearing comment period) to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Written Comments

Interested persons are invited to submit written comments on the proposed rule, the issues raised in this hearing notice and on materials which are already part of the record for this rulemaking. Written comments must be postmarked by March 20, 1990 and submitted, in quadruplicate, to the Docket Office, Docket S–060, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523–7894, and its hours of operation are 8:15 a.m. to 4:45 p.m. Monday through Friday except Federal holidays. Comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 523–5046 or (for FTS) to 8–523–5046, provided the original and 4 copies of the comment are sent to the Docket Officer thereafter. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

Certification of Record and Final Determination After Hearing

Following the close of the post hearing comment period, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC, 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911.

Signed at Washington, DC on this 29th day of January, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90–2296 Filed 1–31–90; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 89–600]

Cable Hearings

AGENCY: Federal Communications Commission.

ACTION: Notice; Public Hearing.

SUMMARY: The Federal Communications Commission will hold three field hearings as part of its comprehensive study on the status of the cable industry's operations since enactment of the Cable Communications Policy Act of 1984.

DATES: *Hearing dates:* February 12, 1990, March 2, 1990, and March 15, 1990.

ADDRESSES: *Hearing addresses/oral presentation:* The first hearing will be held in Los Angeles, California at City Hall, 200 North Spring Street. The second hearing will be held in Orlando, Florida, Orlando City Council Chambers at City Hall, 400 South Orange Avenue from 9:30 a.m. until no later than 5:30 p.m. Parties wishing to make oral presentations at the Orlando hearing should submit written requests by close-of-business, Friday, February 2, 1990 to the Office of Plans and Policy , FCC 1919 M Street NW., Room 822, Washington, DC 20554, Attention: Jim Hudgens.

Speakers' remarks or draft testimony should be submitted by Friday, February 23, 1990 to the Office of the Secretary, FCC, Room 222, 1919 M Street NW., Washington, DC 20554.

Any filings should be directed to Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jim Hudgens, Office of Plans and Policy, (202) 653–5940, or Michele Farquhar, Office of General Counsel, (202) 632–7020, for information about the hearings and Lorrie Secrest at (202) 632–5050 for media coverage information.

SUPPLEMENTARY INFORMATION: On January 23, 1990, the Commission released the following Public Notice notifying the public that the second of three cable hearings is to be held in Orlando, Florida, and that the focus of this hearing will be the state of competition to cable and the future direction of cable technology. The notice informs interested parties of the procedures to be followed for the second hearing if they wish to make oral presentations and then the procedures to be followed if they are selected as speakers.

Further Public Notices will specify the precise format and speaker schedule for the Orlando hearing as well as the deadlines for submitting speaker requests and written coments for the St. Louis hearing.

Robert L. Pettit,

General Counsel.

January 23, 1990.

FCC to Hold Second of Three Cable Hearings in Orlando

The Federal Communications Commission announced on December 28, 1989, that it will convene three field hearings as part of its comprehensive study on the status of the cable industry's operations since enactment of the Cable Communications Policy Act of 1984. *See Notice of Inquiry* in MM Docket No. 89–600, FCC 89–345 (released December 29, 1989) ("*Cable Inquiry*"). As previously announced, these hearings will be in Los Angeles, California on February 12, 1990; Orlando, Florida on March 2, 1990; and St. Louis, Missouri on March 15.

The second of these hearings is scheduled for Friday, March 2, 1990, in the Orlando City Council Chambers at City Hall, 400 South Orange Avenue, Orlando, from 9:30 a.m. until no later than 5:30 p.m. The focus of the Orlando hearing will be the state of competition to cable (from competing cable systems and other media, including broadcasters, MMDS, and satellite services), and the future direction of cable technology. In addition, we will seek comment on related cable matters from local, state, and federal officials and other interested parties. The final hearing in St. Louis will address the impact of the Cable Act on local cable regulation, including city/cable relations and service quality.

Parties wishing to make oral presentations at the Orlando hearing should submit written requests by close-of-business, Friday, February 2, 1990, to the Office of Plans and Policy, FCC, 1919 M Street NW., Room 822, Washington, DC 20554, Attention: Jim Hudgens. Such requests should clearly identify the speaker, the organization represented (if any), experience and training relevant to the issues to be discussed, particularly as they relate to the cable TV industry and the Commission's pending *Cable Inquiry*, and the specific topic or topics to be discussed. Depending on the number of requests, it may be necessary to limit the number of presenters. If so, we will endeavor to select speakers for the hearing so as to obtain a broad and informed viewpoint. In order to allow time for oral discussion and dialogue, presentations will be limited to five minutes for group representatives and three minutes for speakers representing themselves or single firms. Interested parties are also encouraged to coordinate and/or consolidate their presentations to prevent duplication. All speaker requests will be reviewed and those selected as panelists will be notified.

An original and 10 copies of all selected speakers' remarks or draft testimony, including a summary of no more than two pages, should be submitted by Friday, February 23, 1990 to: Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street NW., Washington, DC 20554, Ref: MM Docket No. 89–600.

One additional copy should also be submitted to Jim Hudgens, Office of Plans and Policy, FCC, room 822. Information submitted at all of the filed hearings will be included as a matter of public record in the Commission's pending *Cable Inquiry* (MM Docket No. 89–600). In addition, all interested parties may submit written comments in the Commission's pending *Cable Inquiry* by March 1, 1990 and reply comments by April 2, 1990, pursuant to the procedures set forth in §§ 1.415 to 1.419 of the Commission's Rules (*e.g.*, six copies of formal comments and one copy of informal comments must be submitted to the Office of the Secretary).

The precise format and speaker schedule for the Orlando hearing will be specified in a further Public Notice. Deadlines for submitting speaker requests and written comments for the St. Louis hearing also will be announced in a future Public Notice. All of the cable hearings will be open to the public. For further information about the hearings, please contact Jim Hudgens at (202) 653–5940. The contact for media coverage is Lorrie Secrest at (202) 632–5050.

[FR Doc. 90–2432 Filed 1–31–90; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1244

[Ex Parte No. 385 (Sub-No. 3)]

Expansion of the ICC Waybill Sample Public Use File

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking sets forth proposed changes to the ICC Waybill Sample Public Use File (PUWF) that will make the PUWF more useful but not compromise confidential shipper or railroad data.

DATES: Comments must be received on or before April 2, 1990.

ADDRESSES: An original and 10 copies of any comments referring to Ex Parte No. 385 (Sub-No. 3) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James A. Nash, (202) 275–6864. (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To receive a copy of the full decision write to, call or pick up in person from: Office of the Secretary, Interstate Commerce Commission, room 2215, Washington, DC 20423. Telephone: (202) 275–7428. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: January 25, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Kathleen M. King,

Acting Secretary.

[FR Doc. 90–2233 Filed 1–31–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 900124–0024]

RIN 0648–AC19

Atlantic Surf Clam and Ocean Quahog Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement conservation and management measures as prescribed in the proposed Amendment 8 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fishery (FMP). This rule would (1)

replace the effort limitation system with an annual individual allocation system (initially issued to vessels), (2) reinstitute common management of the Exclusive Economic Zone (EEZ) surf clam fishery coastwide, and (3) allow for annual suspension of the surf clam minimum size limit.

DATES: Comments on the proposed rule must be received on or before March 15, 1990.

ADDRESSES: Comments on the proposed rule, Amendment 8, or supporting documents should be sent to Mr. Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester, Massachusetts 01930–3799. Mark the outside of the envelope "Comments on Surf Clam and Ocean Quahog Amendment 8."

Copies of Amendment 8, the environmental assessment, and the regulatory impact review are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Delaware, 19901–6790.

Comments on the information collection requirements that would be imposed by this rule should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503, attention: Paperwork Reduction Act Project 0648–XXXX.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Resource Policy Analyst, 508–281–9252.

SUPPLEMENTARY INFORMATION:

Background

Amendment 8 to the FMP was prepared by the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England Fishery Management Council, under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended, 16 U.S.C. 1801 *et seq.* A minority report was submitted by the Council along with the Amendment. A notice of availability for the proposed Amendment was filed with the Office of Federal Register on December 22, 1989 (published 54 FR 53342; December 28, 1989). Copies of Amendment 8 are available from the Council upon request at the address given above.

Since the FMP was adopted in 1977, the surf clam resource has increased, the industry has become more integrated and more stable, and clam product demand has increased. However, the harvest capacity of the fleet now requires a time limit of six trips of six hours each for each permitted vessel per calendar quarter in order to space evenly the quota over a full year and maintain a steady supply to the market. Dramatic changes have occurred since 1977 in fleet performance through increased harvesting efficiency and the stabilization of the surf clam resource, but there is a problem of overcapitalization.

The current moratorium on entry into the Mid-Atlantic surf clam fishery has been in effect since implementation of the FMP. The moratorium was to be a temporary measure to allow time for the development of an alternative limited entry system "such as a stock certificate program." This has essentially frozen the fleet at its current size, but not altered the harvesting capacity of each vessel. Under the current Mid-Atlantic moratorium, only surf clam vessels that leave the fishery involuntarily (e.g., sinking, fire) may be replaced; there is no such restriction on ocean quahog vessels. Under the proposed Amendment, other vessels which have an historical fishing basis and are not actively fishing the Mid-Atlantic would be eligible to receive a quota share. Of the 142 vessels permitted to fish for surf clams in the Mid-Atlantic fishery, 133 actively fish the area. There has never been a moratorium on new entrants for the New England Area. Consequently, NMFS has issued 1,192 permits to fish for surf clams in the New England Area, although only nine vessels regularly fish these waters. Permits are also required for ocean quahog vessels and, with no limit on entry, 993 permits have been issued.

Because surf clam vessels in the Mid-Atlantic Area are capable of fishing 3–4 days per week and, hence, capable of taking the entire quota very early in the year, effort limitations (i.e., quarterly quotas, fishing week, reduced hours, and bad weather makeup day) were instituted in the fishery. The primary purpose was to spread harvesting over the entire fishing year in order to stabilize prices. It has been said that a very few vessels could take the entire fleet's annual quota. The current time-based effort limitation system which places restrictions on the use of efficient techniques of harvesting, processing, and marketing, would be replaced by the vessel allocation system of Amendment 8 which allow operators to use a fishing strategy best suited to their operation.

Amendment 2 divided the management unit into the Mid-Atlantic and New England Areas with no moratorium in New England. The ocean quahog fishery has always remained open to new entrants.

Amendment 8 includes the New England Area and ocean quahogs in its new individual allocation system to provide safeguards against further capital infusions and effort transfer into those fisheries by owners and operators unsuccessful in obtaining "adequate" allocations in the Mid-Atlantic Area, and by new entrants into the surf clam and ocean quahog fishery.

This Amendment to the FMP is intended to: (1) Institute a vessel allocation system in the surf clam and ocean quahog fisheries; (2) remove effort limitation for all Areas; (3) combine the Mid-Atlantic, Nantucket Shoals, and Georges Bank Areas; and (4) revise the surf clam minimum size limit provision. The management unit is all surf clams (*Spisula solidissima*) and all ocean quahog (*Arctica islandica*) in the Atlantic EEZ.

The objective of the Amendment are:

1. Conserve and rebuild Atlantic surf clam and ocean quahog resources by stabilizing annual harvest rates throughout the management unit in a way that minimizes short term economic dislocations;

2. Simplify to the maximum extent the regulatory requirement of clam and quahog management to minimize the government and private cost of administering and complying with regulatory, reporting, enforcement, and research requirements of clam and quahog management;

3. Provide the opportunity for industry to operate efficiently, consistent with the conservation of clam and quahog resources, which will bring harvesting capacity in balance with processing and biological capacity and allow industry participants to achieve economic efficiency including efficient utilization of capital resources by the industry; and

4. Establish a management regime and regulatory framework which is flexible and adaptive to unanticipated short term events or circumstances and consistent with overall plan objectives and long term industry planning and investment needs.

Description of Amendment 8

Problems addressed by the Amendment include: limited entry in the Mid-Atlantic Area surf clam fishery, the New England Area, the surf clam minimum size limit, effort limitations, and ocean quahog management. More specifically, Amendment 8 would: (1) Revise the existing vessel permit requirement; (2) create an allocation permit requirement; (3) create a permit for those who buy, receive, or process surf clams or ocean quahogs; (4) allow NMFS to establish fees for the permits;

(5) combine the three surf clam management areas; (6) initiate a vessel allocation system coastwide for both surf clams and ocean quahogs based 80 percent on historical participation and 20 percent on vessel capacity, which would allow for consolidation of the fleet and retirement of vessels (allocations will be transferable between individuals or corporate entities); (7) remove all surf clam and ocean quahog effort limitations; (8) reduce the surf clam minimum size limit to 4.75 inches; (9) provide that the surf clam minimum size limit may be suspended on a year to year basis under certain conditions; (10) require that dealers, brokers, and processors make their reports available for inspection by authorized officers or designated NMFS employees; (11) expand the requirement that cages be tagged to include ocean quahogs as well as surf clams; (12) prohibit shucking surf clams or ocean quahogs at sea unless specifically authorized by the NMFS Northeast Regional Director (Regional Director); (13) allow the Regional Director to require that vessel owners or operators notify NMFS before a vessel departs the dock on a trip to harvest surf clams or ocean quahogs and before the vessel reaches the dock from a trip on which surf clams or ocean quahogs were caught; (14) remove the moratorium on the entry of new vessels into the Mid-Atlantic surf clam fishery; and (15) allow the Regional Director to authorize experimental fishing not otherwise authorized by the regulations for the collection of fishery data.

Proposed Management Regime

The following is a description of the management regime under the FMP that would be in effect if Amendment 8 is approved and implemented:

The annual Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, and annual quota for surf clams equal between 1,850,000 and 3,400,000 bushels (approximately 31.5–57.8 million lbs of meats). The annual Optimum Yield, Domestic Annual Harvest, Domestic Annual Processing, and annual quota for ocean quahogs range between 4.0 million bushels and 6.0 million bushels (approximately 40–60 million lbs. of meats).

Two permits are needed to fish for and land surf clams and ocean quahogs. One permit is a fishing vessel permit and the other is an allocation permit. Vessels taking surf clams or ocean quahogs for personal use are exempt from this requirement. Personal use is defined as the harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed two bushels per person per trip.

Processors and dealers are also required to obtain a permit.

Any vessel of the United States is eligible for a *fishing vessel permit.* Vessels previously in the fishery must have submitted all required logbook reports.

The Regional Director may establish fees for the fishing vessel permit.

Fishing vessel permit applications are processed by the Regional Director. The application form shall require provision of at least the following information: Names, addresses, and telephone numbers of the owner and operator; if the owner is a corporation, the name of the responsible corporate officer; the name of the vessel; the vessel's U.S. Coast Guard documentation number or State license number; engine and pump horsepower; home port of the vessel; directed fishery or fisheries; fish hold capacity (in cages or bushels); dredge size; and number of dredges. The vessel owner or operator is required to notify NMFS in writing of any changes of address or physical characteristics of vessels. A permit is void if the change has not been reported to NMFS.

A fishing vessel permit is valid only for the vessel for which it is issued.

The fishing vessel permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit, the vessel, its gear, and catch shall be subject to inspection upon request by any authorized official.

Fishing vessel permits expire on December 31 of each year.

Vessel owners or operators who apply for a fishing vessel permit must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all the requirements of this part; provided, however, that such owners or operators fishing exclusively within waters under the jurisdiction of any State which prescribes minimum surf clam sizes or requires cage tags shall not be subject to conflicting Federal minimum sizes or tagging requirements. All such fishing, catch, and gear will remain subject to any applicable state requirements. If a requirement of the FMP as amended and a management measure required by State law differ, except for measures respecting surf clam minimum sizes and cage tagging in States which require either, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

Vessel permits may be suspended, revoked, and modified by the Regional Director for violations of the FMP as amended.

Any *processor* or *dealer* of surf clams or ocean quahogs must have a *permit* maintained at his/her principal place of business.

An applicant must apply for a Processor/Dealer permit in writing to the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name, principal place of business, mailing address, and telephone number of the applicant. The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of the receipt of a completed application.

A permit expires on December 31 of each year or if the ownership or the dealer or processor changes.

Any processor or dealer permit remains valid until it expires or is suspended or revoked or ownership changes.

Any permit which is altered, erased, or mutilated is invalid.

The Regional Director may issue replacement permits. Any application for a replacement permit shall be considered a new permit.

Processor and dealer permits are not transferable or assignable. Each is valid only for the person to whom it is issued.

The person to whom a processor or dealer permit is issued must maintain it at his/her principal place of business. The permit must be displayed for inspection upon request by an authorized officer or any employee of NMFS designated by the Regional Director.

Any processor or dealer permit may be suspended, revoked, or modified. Procedures governing permit sanctions or denials are found at subpart D of 15 CFR part 904.

The Regional Director may, after publication of a notice in the **Federal Register**, charge a permit fee.

Within 15 days after the change in the information contained in an application for a processor or dealer permit, the person issued the permit must report the

change in writing to the Regional Director. A permit is void if the change has not been reported to NMFS.

Surf clams and ocean quahogs must be landed pursuant to an *allocation permit*. An allocation permit takes the form of (1) an individual allocation certificate specifying the share of the annual surf clam and/or ocean quahog quota the allocation is worth, (2) surf clam and/or ocean quahog cage tags equivalent to the cages resulting from applying the individual allocation to the annual quota, and (3) any documentation issued by NMFS concerning the transfer of individual allocations and cage tags.

The Regional Director may establish fees for the allocation permit; that is, to cover the cost of issuing the allocation permit document, issuing the annual allocation of cage tags, and issuing any documentation concerning the transfer of cage tags and allocations. Authorization to charge administrative costs includes allowing the Regional Director to arrange for cage tags to be produced and distributed by a specified vendor.

Only persons qualified to own permitted fishing vessels under U.S. law are eligible to own allocation permits.

Information concerning allocation permits is considered public information since it is information given to the fishermen by NMFS rather than information received from the fishermen, which is specified by the Magnuson Act as confidential.

Allocation permits may be suspended, revoked, or modified by the Regional Director for violations of the FMP as amended.

Within two calendar quarters following implementation of the Amendment, allocation permits will be issued to owners or operators of permitted vessels which harvested surf clams or ocean quahogs (based on logbook reports) between January 1, 1979, and December 31, 1988. The amount of the initial distribution (that is, the percentages shown on the individual allocation permit) of surf clams will be based on the following formula:

1. For vessels with permits to fish for surf clams in any Area (that is, vessels with permits issued pursuant to the moratorium), the initial surf clam distribution will be based on the following:

a. The surf clam catch (in bushels) that each permitted vessel caught (based on logbook reports) for calendar years 1979, 1980, 1981, 1982, 1983, 1984, 1985 (counted twice), 1986 (counted twice), 1987 (counted twice), and 1988 (counted twice) will be determined.

b. The two years with the vessel's lowest landings will be deleted from each vessel's history. The resulting number (in bushels) for each moratorium vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total.

c. The cost factor (vessel length x width x depth) of each vessel will be calculated. The resulting number (in cubic feet) for each moratorium vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total. The vessel's historical ratio contributes 80 percent to the vessel's initial allocation. The cost factor contributes 20 percent to the vessel's initial allocation.

2. For vessels with permits to fish for surf clams in *only* the New England Area, the surf clam catch will be the average of the catch for the years actually fished between 1979 and 1988, inclusive. The lowest catch year will be deleted from each vessel's history. This number (in bushels) for each New England vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total. The ratios for vessels in both the New England and moratorium Areas, and modified by transfers of allocations, will be applied to each year's annual quota to calculate each vessel owner's annual allocation.

3. The amount of the initial distribution (that is, the percentages shown on the individual allocation) for ocean quahogs will be based on:

a. The average ocean quahog catch (in bushels) that each permitted vessel caught (based on logbook reports) for those years the vessel actually reported landings for calendar years 1979 through 1988, with the vessel's lowest catch year not counted, will be determined.

b. The resulting number (in bushels) for each quahog vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total.

c. The ratio will be applied to each year's annual quota to calculate each vessel's annual allocation.

For all three formulae, to calculate historical participation, vessels that have replaced other vessels will be credited with the catch of the vessels they replaced.

Prior to issuing the initial allocation permits, the Regional Director will inform each vessel owner or operator of the data upon which the allocation will be based (for example, logbook reports and/or vessel dimensions from the U.S. Coast Guard documentation records). Owners or operators will have 30 days to document if any of these data are incorrect and need to be changed. The logbook submitted is the official document and cannot be changed or submitted after the due date as a basis of seeking a change in allocation. An error by NMFS in compiling the original report is a basis for change.

Once the final annual quotas for surf clams and ocean quahogs have been published by the Regional Director for any year, NMFS will calculate the number of cage tags by applying the appropriate percentages (from the individual allocation) to the annual quota for each species. These bushel allocations will then be divided by 32 (bushels per cage) to yield the appropriate number of cages for which cage tags may be issued. The cage tags are valid only for the calendar year for which they are issued. Surf clam tags may not be used on cages containing ocean quahogs and ocean quahog tags may not be used on cages containing surf clams. Clearly, it is necessary for the Regional Director to develop tags which are significantly different between the two species, in order to facilitate enforcement.

There are no restrictions on the permissible use of the quota (that is, an owner does not have to harvest his or her share) or on the time of harvest other than it must be landed by a permitted vessel during the year for which the tags were issued. An owner may obtain a permitted vessel to harvest his or her allocation or he or she may contract for the allocation to be caught by any permitted vessel. However, the allocation may be reduced by NMFS for violations of the Magnuson Act.

The ownership of an allocation may be transferred in amounts not less than 160 bushels (i.e., five cages) to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102. A written application must be submitted to the Regional Director specifying the number of bushels to be transferred and the new owner at least 10 days before the applicant desires the transfer to be effective. Transfers may not be made between October 15 and December 31 of each year. The transfer is not effective until the new owner receives an allocation permit from the Regional Director.

Fishing for surf clams and ocean quahogs is permitted seven days per week.

There is a surf clam minimum size limit of 4.75 inches, which is the size of maximum yield per recruit. There is a tolerance of 50 undersized clams per cage. If any cage is in violation of the size limit, the entire load is in violation.

The surf clam minimum size limit may be suspended by the Regional Director on the recommendation of the Council on a year to year basis unless 30 percent of the clams (based on a review by the Council of discard, catch, and survey data) are smaller than 4.75 inches (size of maximum yield per recruit) and the overall reduced size was not attributable to beds where growth of the individual clams had been reduced because of density dependent factors. It is the Council's intent that the size limit suspension will generally be in effect when the vast majority of the surf clams are larger than maximum yield per recruit size, and the suspension will generally not be in effect when there are large numbers of small surf clams as a result of sets of large year classes. This analysis will be carried out as part of the annual quota-setting process.

The reporting requirements continue with three changes. Dealers must file reports similar to those that processors must file. Dealers and processors must make their reports available for inspection by authorized officers or designated NMFS employees (the same requirement that has been in effect for vessel logbooks). The allocation permit number must be reported on both the vessel logbook reports and the dealer/processor reports.

All surf clam and ocean quahog cages shall be tagged during offloading before the cable is removed from the cage on the dock and tags shall not be removed until cages are emptied at the processing plant. Information to be shown on the tags shall be determined by the Regional Director, in consultation with the Council, but will include at least the information needed to establish a chain of evidence adequate for enforcement of the surf clam minimum size limit and the vessel allocation system from the vessel through the transportation system to the processor, inclusive. The Regional Director shall determine the minimum specifications of the tags, which at a minimum shall assure that markings are not erased prior to the cages being emptied at the processing plant. Tags for surf clam cages must be significantly different from tags for ocean quahog cages, in order to facilitate enforcement.

No person shall possess a tagged cage not containing surf clams or ocean quahogs.

No person shall possess a cage containing any surf clams or ocean quahogs without a tag after the cable (used in unloading cages from the vessel to the dock) is removed from the cage on the dock, until the cage is emptied.

The Regional Director may allow the shucking of surf clams or ocean quahogs at sea if he determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking. Any vessel owner may apply in writing to the Regional Director to shuck surf clams or ocean quahogs at sea. The application shall specify: Name and address of the applicant; permit number of the vessel; method of calculating the amount of surf clams or ocean quahogs harvested in the shell; vessel dimensions and accommodations; and length of fishing trip. The Regional Director will provide an observer to any vessel owner whose application is approved. The owner will pay all reasonable expenses of carrying the observer on board the vessel. The observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification must be made by the observer's signature on the daily fishing log.

Based on the recommendation of the Council, the Regional Director may allow shucking at sea of surf clams or ocean quahogs if he determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell. In making that determination, the Regional Director shall also specify whether an observer shall still be required. The Regional Director will publish a notice in the **Federal Register** specifying a conversion factor together with the data used in its calculation for a 30 day comment period. After consideration of the public comments, and any other relevant data, the Regional Director may publish a final notice specifying the conversion factor. If the Regional Director makes this determination, he may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel. The observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log.

The Regional Director may authorize experimental fishing for surf clams or ocean quahogs in order to gather information necessary for management. Such experimental fishing will not require an allocation permit.

The Regional Director may require that vessel owners or operators notify NMFS in a manner and timing established by the Regional Director befor a vessel departs the dock on a trip to harvest surf clams and ocean quahogs and before the vessel reaches the dock from a trip on which surf clams or ocean quahogs were caught.

It is the Council's intent that this management regime be implemented within two calendar quarters following approval by the Secretary.

To provide fishermen and other interested members of the public with a clear understanding of what the regulatory requirements would be if Amendment 8 is approved, the proposed regulations published here include the surf clam and ocean quahog regulations of 50 CFR part 652, in is entirety; i.e., existing provisions that would be retained and proposed measures to implement Amendment 8.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99–659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of the receipt of the amendment and proposed regulations. At this time, the Secretary has not determined that the Amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an environmental assessment for the Amendment that discusses the impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council (see **ADDRESSES**).

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review which demonstrates positive net short-term and long-term economic benefits to the fishery under the proposed management measures. The proposed rule is not expected to have an annual impact of $100 million or more; nor to lead to an increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; nor to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises in domestic or export markets. A copy of this review may be obtained from the Council (see **ADDRESSES**).

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of the order.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based on the regulatory impact review and the analysis contained in the Amendment prepared by the Council which determined that if vessel owners take advantage of the opportunity to reduce the total numbers of vessels through consolidation, the net revenues would exceed $7 million (an average of $96,100/vessel) compared to current estimated losses of $3 million. The imposition of a vessel allocation in the surf clam and ocean quahog fisheries may have varying impacts on individual vessels. A vessel may lose its current share of the surf clam resource but gain on an ocean quahog allocation. When a comparison is done in terms of the share of the surf clam quota allocated per vessel versus the share of the total catch the vessel caught over time, the results are that the most disadvantaged boat would lose 0.3272 percent of the quota, the median vessel would lose 0.0012 percent, and the most advantaged would gain 1.3206 percent. To reflect current quotas (3.150 million bushels) and prices (calculated at $8/bushel), this would equate to $82,500, $300, and $332,800 respectively. When a similar comparison was done for ocean quahogs (quota—5.2 million bushels; price—$2.75/bushel), the allocation formula produced the greatest loss of 1.9839 percent ($283,700), the median vessel gained .043 percent ($6,100), and the largest gain was 1.835 percent ($262,400). The number of vessels that would be significantly worse off under Amendment 8, particularly recently built vessels with large capacity and little history, is not believed substantial. A copy of the regulatory impact review may be obtained from the Council at the address listed above. As a result, a regulatory flexibility analysis was not prepared.

This rule contains one new collection-of-information requirement and revises three existing requirements subject to the Paperwork Reduction Act. Requests to collect this information are being submitted to the Office of Management and Budget for approval. The requirements are (1) establishing a new transfer log to track transfers of allocation among the industry; (2) revising the Shellfish Processor's Report (OMB Control #0648–0229); (3) revising the Federal Fisheries Permit (OMB Control #0648–0202) application for dealers who purchase surf clams or ocean quahogs; and (4) revising the Shellfish Fishing Trip Record (OMB Control #0648–0212). The public reporting burdens for these new and revised collections of information are estimated to average 5, 15, 5, and 12.5 minutes, respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Information collection contained in § 652.25(a)(2) will be forwarded to OMB for approval and the information collection contained in § 652.6(a)(3) is currently under review by OMB. Implementation of final rules for these sections is contingent on OMB approval and may be delayed. Send comments on these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. Letters have been sent to all of the States listed above stating that the Council concluded that the Amendment is consistent to the maximum extent practicable with the State's coastal zone management program. The responsible State agencies are reviewing this under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 652

Administrative practice and procedure, Fish, Fisheries, Vessel permits and fees.

Dated: January 26, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to revise 50 CFR part 652 to read as follows:

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERY

Subpart A—General Provisions

Sec.

652.1 Purpose.
652.2 Definitions.
652.3 Relation to other laws.
652.4 Vessel permits.
652.5 Processor/dealer permits.
652.6 Recordkeeping and reporting.
652.7 Vessel identification.
652.8 Prohibitions.
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652.10 Penalties.
652.11 Foreign fishing.
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Subpart B—Management Measures

652.21 Catch quotas.
652.22 Annual individual allocations.
652.23 Closed areas.
652.24 Size restriction.
652.25 Processing at sea.
652.26 Experimental fishery.

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

Subpart A—General Provisions

§ 652.1 Purpose.

This part implements the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries as amended by the Mid-Atlantic Fishery Management Council in consultation with the New England Fishery Management Council. These regulations govern the conservation and management of surf clams and ocean quahogs in the Atlantic EEZ.

§ 652.2 Definitions.

In addition to the definitions in the Magnuson Act, and in § 620.2 of this chapter, the terms used in this part have the following meanings:

Bushel means a standard unit of measure deemed to hold 1.88 cubic feet (53.24L) of surf clams or ocean quahogs in the shell.

Cage means a container with a standard unit of measure containing 60 cubic feet (1,700 L). The outside dimensikons of a standard cage generally are 3' (91 cm) wide, 4' (122 cm) long and 5' (152 cm) high.

Council means the Mid-Atlantic Fishery Management Council.

Dealer means a person who receives surf clams and ocean quahogs for a commercial purpose other than

transport on land and who does not remove them from the cage.

Fishing trip means a departure from port, transit to the fishing grounds, fishing, and a return to port.

Offloading means to separate physically a cage from a vessel such as by the removal of the sling or wire used to remove the cage from the harvesting vessel.

Personal use means harvest of surf clams or ocean quahogs for use as bait, for human consumption, or for other purposes (not including sale or barter) in amounts not to exceed 2 bushels (106.5 L) per person per trip.

Processor means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Regional Director means the Regional Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2998. Telephone 508–281–9250.

§ 652.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

§ 652.4 Vessel permits.

(a) *General*—(1) *Requirement.* Any vessel of the United States fishing for surf clams or ocean quahogs, except vessels taking surf clams or ocean quahogs for personal use or fishing exclusively within state waters, must have a permit issued under this section aboard the vessel.

(2) *Condition.* Vessel owners or operators who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed) will be subject to all the requirements of this part; provided, however, that such owners or operators fishing exclusively within waters under the jurisdiction of any State which prescribes minimum surf clam sizes or requires cage tags shall not be subject to conflicting Federal minimum sizes or tagging requirements. All such fishing, catch, and gear will remain subject to any applicable State requirements. If a requirement of this part and a management measure required by State law differ, except for measures respecting surf clam minimum sizes and cage tagging in States which require either, any vessel owner or operator permitted to fish in the EEZ must comply with the more restrictive requirement.

(b) *Eligibility.* Any vessel of the United States is eligible for a fishing vessel permit.

(c) *Application.* (1) The owner or operator must submit a fishing vessel permit application on an appropriate form obtained from the Regional Director before November 1 of each year or at least 30 days before the date the applicant desires to have the permit be effective. The application will contain at least the following information:

(i) Names, mailing addresses, and telephone numbers of the owner and operator or, if the owner is a corporation, the responsible corporate officer;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number or State license number;

(iv) Engine and pump horsepower;

(v) Home port of the vessel;

(vi) Directed fishery or fisheries;

(vii) Fish hold capacity (in cages or bushels);

(viii) Dredge size and number of dredges;

(ix) Signature of the owner or operator; and

(x) Any other information which may be necessary for the issuance or administration of the permit.

(2) Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of such deficiency. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a fishing vessel permit to each vessel for which an application is submitted only if the vessel has submitted all required logbooks.

(e) *Transfer.* A fishing vessel permit is valid only for the vessel for which it is issued.

(f) *Display.* The fishing vessel permit must be carried, at all times, on board the vessel for which it is issued, and must be maintained in legible condition. The permit shall be subject to inspection upon request by any authorized official.

(g) *Expiration.* A fishing vessel permit will expire on December 31 of each year.

(h) *Fees.* The Regional Director may, after publication of a notice in the **Federal Register**, charge a permit fee.

(i) *Duration.* A permit is valid until it expires or is revoked, suspended, or modified under 15 CFR part 904.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the person issued the permit must report the change in writing to the Regional Director. The permit is void if a change in information is not reported.

(k) *Sanctions.* Procedures governing fishing vessel permit sanctions and denials are found at subpart D of 15 CFR part 904.

§ 652.5 Processor/dealer permits.

(a) *General.* Any processor or dealer or surf clams of ocean quahogs must have a permit issued under this section maintained at his/her principal place of business.

(b) *Application.* (1) An applicant must apply for a Processor/Dealer permit in writing to the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. Applicants must contain the name, principal place of business, mailing address and telephone number of the applicant.

(2) The Regional Director will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(C) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit within 30 days of the receipt of a completed application.

(d) *Expiration.* A permit expires on December 31 of each year or if the ownership of the dealer or processor changes.

(e) *Duration.* Any permit issued under this section remains valid until it expires or is suspended or evoked or ownership changes.

(f) *Alteration.* Any permit which is altered, erased, or mutilated is invalid.

(g) *Replacement.* The Regional Director may issue replacement permits. Any application for a replacement permit shall be considered a new permit.

(h) *Transfer.* A permit issued under this section is not transferable or assignable. It is valid only for the person to whom it is issued.

(i) *Inspection.* The person to whom a permit is issued under this section must maintain it at his/her principal place of business. The permit must be displayed for inspection upon request by an authorized officer or any employee of NMFS designated by the Regional Director.

(j) *Sanctions.* Procedures governing permit sanctions or denials are found at subpart D of 15 CFR part 904.

(k) *Fees.* The Regional Director may, after publication of a notice in the **Federal Register**, charge a permit fee.

(l) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, the person issued the permit must report the change in writing to the Regional Director. A permit is void if a change in information is not reported.

§ 652.6 Recordkeeping and reporting.

(a) *Processors and dealers*—(1) *Processors—Weekly report.* Processors shall provide at least the following information to the Regional Director on a weekly basis, on forms supplied by the Regional Director:

(i) Date of purchase or receipt;

(ii) Name, permit number, and mailing address;

(iii) Number of bushels by species;

(iv) Cage tag numbers;

(v) Allocation permit number;

(vi) Vessel name and permit number;

(vii) Price per bushel by species;

(viii) Size distribution; and

(ix) Meat yield by bushel by species.

(2) *Dealers—Weekly report.* Dealers shall provide at least the following information to the Regional Director on a weekly basis, on forms provided by the Regional Director:

(i) Date of purchase or receipt;

(ii) Permit number and address;

(iii) Number of bushels by species;

(iv) Cage tag numbers;

(v) Allocation permit number;

(vi) Vessel name and permit number;

(vii) Price per bushel by species; and

(viii) Disposition of surf clams or ocean quahogs including name and permit number of recipient.

(3) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section shall also provide the following information to the Regional Director on an annual basis, on forms supplied by the Regional Director:

(i) Average number of processing plant employees during each month of the year just ended;

(ii) Average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended;

(iii) Plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species;

(iv) An estimate, for the next year, of the capacities described in paragraph (a)(3)(iii) of this section; and

(v) Total payroll for surf clam and ocean quahog processing, by month. If the capacities described in paragraph (a)(3)(iii) of this section change more than ten percent during any year, the processor shall promptly notify the Regional Director.

(4) *Inspection.* A dealer or processor shall make the reports required by this paragraph available for inspection upon the request of an authorized officer or by an employee of NMFS designated by the Regional Director.

(5) *Record retention.* For one year from the date of entry on a record required by this paragraph, a dealer or processor shall keep each record at his/her principal place of business.

(b) *Owners and operators.*—(1) *Daily fishing log.* The owner or operator of any vessel conducting any fishing operations subject to these regulations shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director, showing at least:

(i) Name and permit number of the vessel;

(ii) Total amount in bushels of each species taken;

(iii) Date(s) caught;

(iv) Time at sea;

(v) Duration of fishing time;

(vi) Locality fished;

(vii) Crew size;

(viii) Crew share by percentage;

(ix) Landing port;

(x) Date sold;

(xi) Price per bushel;

(xii) Buyer;

(xiii) Tag numbers from cages used;

(xiv) Quantity of surf clams or ocean quahogs discarded; and

(xv) Allocation permit number.

(2) *When to fill in log.* Owners or operators shall fill in the daily log before landing surf clams or ocean quahogs.

(3) *Inspection.* The owner or operator shall make the logbook available for inspection upon the request of an authorized officer, or an employee of the NMFS designated by the Regional Director to make such inspections.

(4) *Record retention.* For one year after the date of the last entry in the log, each owner or operator shall keep each logbook at his/her principal place of business.

(5) *Weekly reports.* The owner or operator shall submit weekly reports to the Regional Director, on forms supplied by the Regional Director. If no fishing trip is made during a week, a report so stating must be submitted.

§ 652.7 Vessel identification.

(a) *Official number.* The operator of each fishing vessel 25 feet in length or longer subject to these regulations shall display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. Vessels under 25 feet in length do not need to display any number. The official number is the documentation number issued by the U.S. Coast Guard or the certificate of number issued by a State or the U.S. Coast Guard for undocumented vessels.

(b) *Markings.* Such markings must be at least eighteen (18) inches in height for fishing vessels over 65 feet in length, and at least ten (10) inches in height for all other vessels over 25 feet in length. The official number must be permanently affixed to or painted on the vessel and must be block Arabic numerals of a color that contrasts with the background.

(c) *Duties of the operator.* The operator of each vessel shall:

(1) Keep the required identifying markings clearly legible and in good repair; and

(2) Ensure that no part of the vessel, its rigging, or its fishing gear obstructs the view of the markings from an enforcement vessel or aircraft.

(d) *New Jersey vessels.* Instead of complying with paragraphs (a) and (b) of this section, vessels licensed under New Jersey law may use the appropriate vessel identification markings established by the State.

§ 652.8 Prohibitions.

(a) In addition to the general prohibitions specified in 50 CFR part 620, it is unlawful for any person owning or operating a vessel issued a permit under § 652.4 or issued an allocation permit under § 652.22 to do any of the following:

(1) Land or possess any surf clams which do not meet the minimum sizes specified in § 652.24;

(2) Land or possess any surf clams or ocean quahogs in excess of an individual allocation; or

(3) Transfer any surf clams or ocean quahogs to any person for a commercial purpose other than transport, unless that person has a permit issued under § 652.5.

(b) It is unlawful for any person to do any of the following:

(1) Fish for surf clams or ocean quahogs in the EEZ during closed seasons;

(2) Fish or surf clams or ocean quahogs in the areas closed under § 652.23;

(3) Use a vessel of the United States for taking, catching, harvesting, or landing any surf clams or ocean quahogs taken from the EEZ unless the vessel has a permit required under this part

and the permit is aboard the vessel, or after the revocation or during the period of suspension of any permit issued under § 652.4;

(4) Unload, or cause to be unloaded, or sell or buy any surf clams or ocean quahogs whether on land or at sea as an owner, operator, dealer, processor, buyer, or receiver in the surf clam or ocean quahog fishery, without preparing and submitting the documents by § 652.6;

(5) Alter, erase or mutilate any permit issued under § 652.4, § 652.5, or § 652.22;

(6) Alter, erase, mutilate, cause to be duplicated, or steal any cage tag issued under § 652.12;

(7) Produce, or cause to be produced, cage tags required under § 652.12 without written authorization of the Regional Director;

(8) Tag a cage with a tag that has been rendered null and void or with a tag that has been previously used;

(9) Tag a cage of surf clams with an ocean quahog cage tag or tag a cage of ocean quahogs with a surf clam trade tag;

(10) Possess surf clams taken in violation of the size limits prescribed in § 652.24;

(11) Possess an empty cage to which a cage tag required by § 652.12 is affixed or possess any cage that does not contain surf clams or ocean quahogs and to which a cage tag required by § 652.12 is affixed;

(12) Land or possess after offloading any cage holding surf clams or ocean quahogs without a cage tag or tags required by § 652.12;

(13) Submit or maintain false information in records and reports required to be kept or filed under § 652.6;

(14) Sell null and void tags;

(15) Shuck surf clams or ocean quahogs at sea unless permitted by the Regional Director under the terms of § 652.25;

(16) Receive for a commercial purpose other than transport surf clams or ocean quahogs landed under an allocation under § 652.22 without a permit issued under § 652.5;

(17) Land unshucked surf clams or ocean quahogs in containers other than cages; or

(18) Violate any other provision of the Act, these regulations, or any applicable permit issued under § 652.4, § 652.5 or § 652.22.

(c) Possession of surf clams or ocean quahogs on the deck of any fishing vessel in closed areas or the presence of any part of a vessel's gear in the water in closed areas or more than twelve hours after an announcement closing the entire fishery becomes effective shall be prima facie evidence that such vessel was fishing in violation of the provisions of the Magnuson Act and the regulations.

§ 652.9 Facilitation of enforcement.

(a) The Regional Director may require vessel owners or operators to notify NMFS prior to the departure for or return from a fishing trip for surf clams or ocean quahogs. The Regional Director will publish a notice in the **Federal Register** specifying such notice requirement for a 30 day public comment period. After consideration of the public comments, the Regional Director may publish a final notice specifying the notice requirement.

(b) The vessel permits, the vessel, its gear, and catch shall be subject to inspection upon request by any authorized official.

(c) Also see § 620.8 of this chapter.

§ 652.10 Penalties.

See § 620.9 of this chapter.

§ 652.11 Foreign fishing.

Fishing for surf clams or ocean quahogs in the EEZ by any vessel other than a vessel of the United States is prohibited.

§ 652.12 Cage identification.

(a) *Tagging.* Before offloading, all cages that contain surf clams or ocean quahogs must be tagged with tags acquired annually under paragraph (b) of this section. A tag must be fixed on or as near as possible to the upper crossbar of the cage for every 60 (1,700 L) cubic feet, or portion thereof, of the cage. A tag or tags must not be removed until the cage is emptied by the processor, at which time the processor must promptly remove and retain the tag(s) for collection or disposal as specified by the Regional Director.

(b) *Acquisition.* The Regional Director will issue a supply of tags to each individual vessel owner qualifying for an allocation under § 652.22 prior to the beginning of each fishing year. The number of tags will be based on the owner's allocation. Each tag represents 32 bushels (1,700) bushels of allocation. The Regional Director may specify, after notice in the **Federal Register**, a vendor from whom the tags must be purchased.

(c) *Expiration.* Tags will expire at the end of the fishing year for which they are issued or if rendered null and void by the Regional Director.

(d) *Return.* Tags that have been rendered null and void by the Regional Director must be returned to the Regional Director.

(e) *Loss.* Loss or theft of tags must be reported by the owner numerically identifying the tags to the Regional Director by telephone as soon as the loss or theft is discovered and in writing within twenty four hours.

(f) *Replacement.* Lost tags may be replaced by the Regional Director if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags will be provided by the Regional Director or purchased from a vendor with a written authorization from the Regional Director.

(g) *Transfer.* Cage tags may be transferred in quantities not less than five tags at any one time. Transfers must be reported to the Regional Director on forms by the Regional Director within five days of the transfer.

(h) *Presumptions.* Surf clams or ocean quahogs found in cages without a valid State tag are deemed to have been harvested in the EEZ, and are part of an individual's allocation. Surf clams or ocean quahogs in cages with a tag or tags affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued or transferred under § 652.22(f).

Subpart B—Management Measures

§ 652.21 Catch quotas.

(a) *Surf clams.* The amount of surf clams which may be caught annually by fishing vessels subject to these regulations will be specified annually by the Regional Director, on or about December 1, within the range of 1,850,000 and 3,400,000 bushels.

(1) *Establishing quotas.* Prior to the beginning of each year, the Council, following an opportunity for public comment, will recommend to the Regional Director quotas and estimates of domestic annual harvest (DAH) and domestic annual processing (DAP) within the ranges specified. In selecting the quota the Council shall consider current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the optimum yield;

(ii) Fishing mortality rates relative to the optimum yield;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches;

(v) Geographical distribution of the catch relative to the geographical distribution of the resource; and

(vi) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

The quota shall be set at that amount which is most consistent with the objectives of the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan. The Regional Director may set quotas at quantities different from the Council's recommendation only if he can demonstrate that the Council's recommendations violate the national standards of the Magnuson Act and the objectives of the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan.

(2) *Report.* Prior to the beginning of each year, the Regional Director will prepare a written report, based on the latest available stock assessment report prepared by the NMFS, data reported by harvesters and processors according to these regulations, and other relevant data. The report will include consideration of:

(i) Exploitable biomass and spawning biomass relative to optimum yield;

(ii) Fishing mortality rates relative to optimum yield;

(iii) Magnitude of incoming recruitment;

(iv) Projected effort and corresponding catches;

(v) Status of areas previously closed to surf clam fishing that are to be opened during the year and areas likely to be closed to fishing during the year; and

(vi) Geographical distribution of the catch relative to the geographical distribution of the resource.

(3) *Public review.* Based on the information presented in the report, and in consultation with the Council, the Secretary will propose an annual surf clam quota and an annual ocean quahog quota and will publish them in the **Federal Register**. Comments on the proposed annual quotas may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments, determine the appropriate annual quotas, and publish the annual quotas in the **Federal Register** on or about December 1 of each year as provided for in § 652.21(a).

(b) *Ocean quahogs.* The amount of ocean quahogs that may be caught by fishing vessels subject to these regulations will be specified annually by the Regional Director, on or about December 1, within the range of 4,000,000 to 6,000,000 bushels, following the procedures set forth in § 652.21(a)(1) and (2).

§ 652.22 Annual individual allocations.

(a) *Allocation permits.* The Regional Director shall initially divide the quotas specified under § 652.21 by individual allocations among the owners of vessels having reported landings of surf clams or ocean quahogs between January 1, 1979, and December 31, 1988. Allocations shall be made, by species, in the form of an allocation permit issued to the vessel owner specifying the total number of bushels he/she is entitled to harvest, together with cage tags issued pursuant to § 652.12, based on the allocation percentage calculated in paragraph (b) of this section. Allocations in subsequent years shall be made after specification of the annual quotas for surf clams and ocean quahogs pursuant to § 652.21, on or about December 15th, to the registered owner of the individual allocation as of November 1st, by applying the allocation percentages to the annual quota. The total number of bushels of allocation will be divided by 32 to determine the appropriate number of cage tags to be issued or acquired under § 652.21. Amounts of allocation greater than 0.5 created by this division are rounded upward to allow an allocation to be specified in whole cages.

(b) *Initial allocation formulas.* Individual allocations of surf clams and ocean quahogs will be calculated as percentages of the annual quotas by summing the initial allocation of all vessels and representing each vessel's ratio as a percentage of the total of the fleet's initial allocation based on the following formulas:

(1) *Surf clams.* (i) For owners of vessels with permits to fish for surf clams and ocean quahogs in any Area (that is, vessels with permits issued pursuant to the moratorium), the initial surf clam distribution will be based on the following formula:

(A) The surf clam catch (in bushels) that each permitted vessel caught (based on logbook reports) for calendar years 1979, 1980, 1981, 1982, 1983, 1984, 1985 (counted twice), 1986 (counted twice), 1987 (counted twice), and 1988 (counted twice) will be determined. The two years with the vessel's lowest landings will be deleted from each vessel's history.

(B) The resulting number (in bushels) for each moratorium vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total;

(C) The dimensions (vessel length × width × depth) of each vessel will be calculated. The resulting number of (in cubic feet) for each moratorium vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total; and

(D) The vessel's catch ratio contributes 80 percent to the owner's initial allocation. The vessel's dimensions contributes 20 percent to the vessels owner's initial allocation.

(ii) For owners of vessels with permits to fish for surf clams in only the New England Area, the initial surf clam allocation will be based on the following formula:

(A) The average surf clam catch (in bushels) that each permitted vessel caught (based on logbook reports) for those years the vessel actually reported landings for calendar years 1979 through 1988 will be determined, with the year with the lowest catch deleted; and

(B) The resulting number (in bushels) for each New England vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total.

(iii) Vessels that have replaced other vessels will be credited with the catch of the vessels they replaced.

(iv) The ratio, calculated under paragraphs (b)(1)(i) and (ii) as modified by transfers under paragraph (f), will be applied to each year's annual quota to calculate each vessel owner's annual allocation.

(2) *Ocean quahogs.* For owners of vessels with permits to fish for Mid-Atlantic surf clams and oceans quahogs or with permits to fish for ocean quahogs only, the initial ocean quahog allocation will be based on the following formula:

(i) The average ocean quahog catch (in bushels) that each permitted vessel caught (based on logbook reports) for those years the vessel actually reported landings for calendar years 1979 through 1988 will be determined, with the year with the lowest catch deleted;

(ii) The resulting number (in bushels) for each quahog vessel will be summed and each vessel's ratio to this total will be calculated by dividing each vessel's number by this total; and

(iii) The ratio, as modified by transfers under paragraph (f) of this section, will be applied to each year's annual quota to calculate each vessel's annual allocation.

(c) *Notice of allocation.* After calculating the initial allocation, by species, to which each vessel owner is entitled, the Regional Director shall mail, by certified mail, such allocation to each eligible vessel owner. The Regional Director shall include the data and method which were used to calculate the allocation.

(d) *Appeals.* (1) Initial individual allocations may be appealed to the Regional Director within 30 days of the receipt of the notice of allocation. Any such appeal must be in writing. Any appeal must be based on the grounds that the data used by the Regional

Director are incorrect. Unified or revised weekly reports are inadmissible as evidence of error in calculating an allocation.

(i) The appeal may be presented, at the option of the appellant, at a hearing before an officer appointed by the Regional Director.

(ii) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(e) *Effective date.* Within two calendar quarters from the effective date of these regulations, the Regional Director will issue final allocation permits. The percentage share of the quota represented by the allocation shall remain the same each year unless all or part of the allocation is transferred.

(f) *Ownership transfer.* The ownership of an allocation may be transferred in amounts not less than 160 bushels (i.e., five cages) to any person eligible to own a documented vessel under the terms of 46 U.S.C. 12102. A written application must be submitted to the Regional Director specifying the number of bushels to be transferred and the new owner at least 10 days before the applicant desires the transfer to be effective. The application must include the new owner's name, and other information specified on the transfer log, to be supplied to the Regional Director. Transfers may not be made between October 15th and December 31st of each year. The transfer is not effective until the new owner receives an allocation permit from the Regional Director.

(g) *Fee.* The Regional Director may, after publication of a notice in the Federal Register, charge a permit fee.

§ 652.23 Closed areas.

(a) *Areas closed because of environmental degradation.* Certain areas are closed to all surf clam and ocean quahog fishing because of adverse environmental conditions. These areas will remain closed until the Secretary determines that the adverse environmental conditions have been corrected. If additional areas, due to the presence or introduction of hazardous materials or pollutants, are identified as being contaminated, they may be closed by notice published by the Secretary, after a public hearing is held to discuss and assess the effects of such a closure. The areas currently closed are described as follows:

(1) *Boston Foul Ground.* A waste disposal site known as the "Boston Foul Ground" and located at 42°25'36" N. latitude and 70°35'00" W. longitude with a radius of one nautical mile in every direction from that point.

(2) *New York Bight.* A polluted area and waste disposal site known as the "New York Bight Closure" and located at 40°25'04" N. latitude and 73°42'38" W. longitude and with a radius of six nautical miles in every direction from that point, extending further northwestward, westward, and southwestward between a line from a point on the arc at 40°31'00" N. latitude and 73°43'" W. longitude directly toward Atlantic Beach Light in New York to the limit of State territorial waters of New York; and a line from a point on the arc at 40°19'48" N. latitude and 73°45'42" W. longitude to a point at the limit of the State territorial waters of New Jersey at 40°14'00" N. latitude and 73°55'42" W. longitude.

(3) *106 Dumpsite.* A toxic industrial dump site known as the "106 Dumpsite" and located between 38°40'00" N. latitude and 39°00'00" N. latitude and between 72°00'00" W. longitude and 72°30'00" W. longitude.

(b) *Areas closed because of small surf clams.* Certain areas are closed because they contain small surf clams.

(1) *Closure.* The Secretary may close an area to surf clam and ocean quahog fishing if he determines, based on logbook entries, processors' reports, survey cruise, or other information, that the area contains surf clams of which:

(i) 60 percent or more are smaller than 4.5 inches in size; and

(ii) Not more than 15 percent are larger than 5.5 inches in size. (Sizes are measured at the longest dimension of the surf clam.)

(2) *Reopening.* The Secretary may reopen areas or parts of areas closed under paragraph (b) (1) of this section if he determines, based on survey cruises or other information, that:

(i) The average length of the dominant (in terms of weight) size class in the area to be reopened is equal to or greater than 4.75 inches; or

(ii) The yield or rate of growth of the dominant size class in the area to be reopened would be significantly enhanced through selective, controlled or limited harvest of surf clams in the area.

(c) *Procedure.* (1) The Regional Director may hold a public hearing on the proposed closure or reopening of any area under paragraph (a) or (b) of this section. The Secretary will publish notice of any proposed area closure or reopening, including any restrictions on harvest in a reopened area. Comments on the proposed closure or reopening may be submitted to the Regional Director within 30 days after publication. The Secretary will consider all comments and publish the final notice of closure or reopening, and any restrictions on harvest, in the **Federal Register**. Any adjustment to harvest restrictions in a reopened area will be made by **Federal Register** notice. The Regional Director will send notice of any action under this paragraph to each surf clam or ocean quahog processor and to each surf clam or ocean quahog permit holder.

(2) If the Regional Director determines as the result of testing by State, Federal, or private entities that a closure of an area under paragraph (a) of this section is necessary to prevent any adverse affects fishing may have on the public health, he may close the area for 60 days without a prior public hearing. If an extension of the 60 day closure period is necessary to protect the public health, the hearing and notice requirements of paragraph (c)(1) will be followed.

(d) *Presumption.* In closed areas, the presence of surf clams or ocean quahogs aboard any fishing vessel or the presence of any part of the vessel's gear in the water is prima facie evidence that such vessel was fishing for surf clams or ocean quahogs in violation of these regulations.

§ 652.24 Size restriction.

(a) *Minimum length.* A minimum size for surf clams of 4.75 inches.

(1) *Suspension.* Upon the recommendation of the Mid-Atlantic Fishery Management Council, the Regional Director may suspend annually the minimum size unless discard, catch, and survey data indicate that 30 percent of the clams are smaller than 4.75 inches and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density dependent factors.

(2) *Tolerance.* (i) No more than 50 clams in any cage may be less than 4.75 inches.

(ii) If any inspected cage of surf clams is found to be in violation of paragraph (a)(2)(i) of this section, all cages landed by the same vessel from the same trip are deemed to be in violation of the size limit.

(b) *Measurement.* Length is measured at the longest dimension of the surf clam.

§ 652.25 Processing at sea.

(a) *Observers.* (1) The Regional Director may allow the shucking of surf clams or ocean quahogs at sea if he determines that an observer carried aboard the vessel can measure accurately the total amount of surf clams and ocean quahogs harvested in the shell prior to shucking.

(2) Any vessel owner may apply in writing to the Regional Director to shuck

surf clams or ocean quahogs at sea. The application shall specify:

(i) Name and address of the applicant;

(ii) Permit number of the vessel;

(iii) Method of calculating the amount of surf clams or ocean quahogs harvested in the shell;

(iv) Vessel dimensions and accommodations; and

(v) Length of fishing trip.

(3) The Regional Director will provide an observer to any vessel owner whose application is approved. The owner will pay all reasonable expenses of carrying the observer on board the vessel.

(b) *Conversion factor.* (1) Based on the recommendation of the Council, the Regional Director may allow shucking at sea of surf clams or ocean quahogs, with or without an observer, if he determines a conversion factor for shucked meats to calculate accurately the amount of surf clams or ocean quahogs harvested in the shell.

(2) The Regional Director will publish a notice in the **Federal Register** specifying a conversion factor together with the data used in its calculation for a 30 day comment period. After consideration of the public comments, and any other relevant data, the Regional Director may publish a final notice specifying the conversion factor.

(3) If the Regional Director makes the determination specified in paragraph (b)(1), he may authorize the vessel owner to shuck surf clams or ocean quahogs at sea. Such authorization shall be in writing and be carried aboard the vessel.

(4) The observer shall certify at the end of each trip the amount of surf clams or ocean quahogs harvested in the shell by the vessel. Such certification shall be made by the observer's signature on the daily fishing log required by § 652.6.

§ 652.26 Experimental fishery.

The Regional Director may authorize experimental fishing for surf clams or ocean quahogs in order to gather information necessary for management. Such experimental fishing will not require an allocation permit.

[FR Doc. 90-2263 Filed 1-29-90; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 22
Thursday, February 1, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Public Meetings

Summary: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of two meetings of the Committee on Adjudication of the Administrative Conference of the United States. The Committee has scheduled these meetings on February 15 and March 8, 1990 to discuss a study on the Federal Aviation Administration's Civil Penalty Assessment Demonstration Program. Depending on the progress of discussions on the FAA project, discussions on the study on Social Security Act appeals, which began last fall, may be continued at the March 8 meeting.

Dates: February 15, 1990, 1:30 p.m.; March 8, 1990, 1:30 p.m.

Location: Administrative Conference of the U.S. 2120 L Street, NW., suite 500—Library, Washington, DC 20037.

Public Participation: Committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

For further Information Contact: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500 (202) 254–7020.

Dated: January 24, 1990.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 90–2276 Filed 1–31–90; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 26, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Farmers Home Administration

7 CFR 1900–B, Adverse Decisions and Administrative Appeals

FmHA 1900–1

On occasion

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 7,000 responses; 2,400 hours; not applicable under 3504(h)

Jack Holston (202) 382–9736

Extension

• Food and Nutrition Service

Claim for Reimbursement—Summer Food Service Program

FNS–143

Recordkeeping; Monthly; Other

Non-profit institutions; 1,950 responses; 1,463 hours; not applicable under 3504(h)

Toni F. Winchester (703) 756–3870

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90–2259 Filed 1–31–90; 8:45 am]

BILLING CODE 3410-01-M

Federal Grain Inspection Service

Designation Renewal of the Columbus (OH) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Columbus Grain Inspection, Inc. (Columbus), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: March 1, 1990.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that the designation of Columbus terminates on February 28, 1990, and requested applications for official agency designation to provide official services within specified geographic area in the September 1, 1989, **Federal Register** (54 FR 36365). Applications were to be postmarked by October 6, 1989. Columbus was the only applicant and applied for designation in the entire area currently assigned to that agency. The Service announced the applicant name in the November 1, 1989, **Federal Register** (54 FR 46095) and requested comments on the applicant for designation. Comments were to be postmarked by December 18, 1989. Two comments in favor of Columbus' designation renewal were received.

The Service evaluated all available information regarding the designation

criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Columbus is able to provide official services in the geographic area for which the Service is granting the designation. Effective March 1, 1990, and terminating February 28, 1993, Columbus is designated to provide official inspection services in its specified geographic area as previously described in the September 1 Federal Registger.

Interested persons may obtain official services by contacting the Columbus agency at the following telephone number: (614) 474–3519.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 10, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–1706 Filed 1–31–90; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on the Designation Applicants in the Geographic Area Currently Assigned to Bloomington (IL) and Plainview (TX) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Gary R. Weirman dba Bloomington Grain Inspection Department (Bloomington) and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATES: Comments must be postmarked on or before March 19, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454.

Telemail users may respond to [PMARSDEN/FGIS/USDA] telemail.

Telex users may respond as follows: To: Paul Marsden. TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the December 1, 1989, **Federal Register** (54 FR 49785). Applications were to be postmarked by January 2, 1989. Gary R. Weirman, proposing to establish a new corporation, Central Illinois Grain Inspection, Inc., was the only applicant for designation in that area, and applied for the entire area currently assigned to Bloomington. Plainview was the only applicant for designation in that area, and applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing:

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 11, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90–1707 Filed 1–31–90; 9:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to the State of Georgia (GA) and the Schneider (IN) Agency

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Georgia Department of Agriculture (Georgia) and Schneider Inspection Service, Inc. (Schneider).

DATES: Applications must be postmarked on or before March 5, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Georgia, located at Capitol Square, Room 604, Atlanta, GA 30334, and Schneider, located at #1 Village Square, Lake Village, IN 46349 were designated under the Act on August 1, 1987, as official agencies, to provide official inspection services.

The designation of each of these official agencies terminates on July 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Georgia, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Georgia, except those export port locations within the State which are serviced by the Service.

The geographic area presently assigned to Schneider, in the States of Illinois, Indiana, and Michigan, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Illinois and Indiana:

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to Interstate 94; Interstate 94 east-northeast to the northern Laporte County line; the northern St. Joseph and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankahee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

In Michigan: Berrien, Cass, St. Joseph, Branch, and Hillsdale Counties.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Central Soya, and Farmers Grain, both in Winamac, Pulaski County, Indiana (located inside Titus Grain Inspection, Inc.'s area).

Interested parties, including Georgia and Schneider, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas are for the period beginning August 1, 1990, and ending July 31, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 10, 1990.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 90-1708 Filed 1-31-90; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Eastern National Forest Livestock Grazing Fees

AGENCY: Forest Service, USDA.

ACTION: Notice of 1990 grazing fees.

SUMMARY: The Forest Service hereby gives notice of fees for calendar year 1990 for grazing of livestock on National Forest System lands in the East.

EFFECTIVE DATE: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Edward R. Frandsen, Natural Resource Specialist, Range Management Staff, Forest Service, U.S. Department of Agriculture, P.O. Box 96090, Washington, DC 20090-6090, (703) 235-8141.

SUPPLEMENTARY INFORMATION: Grazing fees for the use and occupancy of the National Forest System lands in the Eastern United States are established and collected annually by the Forest Service under the authority of the Organic Act of June 4, 1987, (16 U.S.C. 473-475, 477-482, 551), and the Bankhead-Jones Farm Tenant Act of July 22, 1937, (7 U.S.C. 1010-1012. Rules establishing uniform grazing fees to be collected for grazing livestock in the East have recently been adopted [55 FR 2646-2652, Jan. 26, 1990], at 36 CFR 222.53 and 222.54. Implementation of the new grazing fee system begins with the 1990 fee year.

Under the final rule, eastern grazing fees for 1990 are based on the estimated fair market value of grazing use for 1989. Using market survey information collected by the National Agricultgural Statistics Service, Department of Agriculture, State universities, State agencies, and the Forest Service, the estimated base fair market value per head month for each sub-region for 1989 is as follows:

Sub-region	Rate per head month
Appalachia	$3.68
Southeast/Delta	3.50
Florida	1.75
Northeast	3.38
Lake States	3.41
Corn Belt	4.40

Nonecompetitive Grazing Fees

To mitigate any undue economic impact on existing permittees, especially where the 1989 grazing fee rate was significantly below maket value, rules at 36 CFR 222.53(c)(4) provide that the new fee system will be phased in over a 5-year period. In 1990, grazing fees will be calculated for existing noncompetitive permits as follows:

1990 GRAZING FEES—NATIONAL FOREST SYSTEM LANDS—EASTERN UNITED STATES

Eastern States sub-regions	Rate per head per month	
	1989 Grazing fee (actual)	1990 Calculated fees [1]
Appalachia	[2] $0.87	[3] $1.41
South East/Delta	0.87	1.37
Florida	0.62	0.84
Northeast	2.39	2.71
Lake States	3.38	3.51
Corn Belt	4.40	4.36

[1] Increase based on 5-year implementation

[2] Excludes 1989 actual fees on Monogahela National Forest which were the same as fees in the Northeastern subregion.

[3] 1989 fee on the Monongahela National Forest will be $2.71 per head per month.

Under the new eastern grazing fee rule, annual grazing fees are calculated by multiplying the respective base grazing value by three-year average hay prices (the Hay Price Index) for the designated subregion. To establish the 1990 fees, the agency used market survey information collected by the National Agricultural Statistics Service and the Forest Service to establish a 1989 base fair market value of grazing occupancy and use on National Forest System lands, by subregion. Then, one-fifth of the difference between the 1989 actual fee level and the calculated fair market value rate is used to determine the current year grazing fee.

Competitively Awarded Grazing Permits

In 1990, grazing fees for permittees under competitive bid fee systems on Eastern National Forests will be adjusted by a competitive bid adjustment factor, as follows: Appalachia .98; Southeast/Delta .97; Florida 1.00; Northeast 1.18; lake States 1.19, and Corn Belt .99.

Dated: January 23, 1990.

George M. Leonard,

Associate Chief.

[FR Doc. 90-2281 Filed 1-31-90; 8:45 am]

BILLING CODE 3410-11-M

Environmental Assessment—Interim Standards and Guidelines for the Protection and Management of RCW Habitat Within ¾ Mile of Colony Sites

AGENCY: Forest Service, USDA.

ACTION: Notice; release of the environmental assessment for interim standards and guidelines for the protection and management of Red-cockaded Woodpecker (RCW) habitat within ¾ mile of colony sites for public review and comment.

SUMMARY: The Southern Regional Office of the Forest Service has released, for review and comment, an environmental assessment for interim standards and guidelines for the protection and management of RCW habitat within ¾ mile of colony sites on National Forests in the States of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. The public will have until March 2, 1990, to provide the Regional Forester with comments on the alternatives being considered for the interim standards and guidelines. The Regional Forester's preference in alternatives at this point is Alternative 3; however, after considering the comments received the Regional Forester will decide which alternative to implement and the affected Forest Plans will be amended accordingly. The interim standards and guidelines will be in effect approximately 2 years until the Regional Guide for the South Final Environmental Impact Statement is supplemented and the Regional Guide amended with new RCW protection and management standards and guidelines.

DATES: Due date for comments is March 2, 1990.

ADDRESSES: Send comments to David P. Smith, RCW EIS Team Leader, 1720 Peachtree Rd. NW., Atlanta, Georgia, 30367.

FOR FURTHER INFORMATION CONTACT: David P. Smith, 1720 Peachtree Rd. NW., Atlanta, Georgia, 30367. Phone No. (404) 347–4338.

Dated: January 26, 1990.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 90–2293 Filed 1–31–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Legal Description of Lands Transferred Pursuant to the National Forest and Public Lands of Nevada Enhancement Act of 1988; Correction Notice

AGENCIES: Bureau of Land Management, Interior. U.S. Forest Service, Agriculture.

ACTION: Correction notice.

SUMMARY: This notice makes corrections to Document No. 89–27518 published on November 24, 1989, in Volume 54 FR Pages 48659–48664.

EFFECTIVE DATE: April 26, 1989.

FOR FURTHER INFORMATION CONTACT: Regarding land transferred to the U.S. Forest Service, contact Bob Larkin, Officer, Land Management and Planning, U.S. Forest Service, Toiyabe National Forest, 1200 Franklin Way, Sparks, Nevada 89431. Regarding land transferred to the Bureau of Land Management, contact Bob Stewart, Chief, Public Affairs Staff, Bureau of Land Management, Nevada State Office, P.O. Box 12000, 850 Harvard Way, Reno, Nevada 89520.

SUPPLEMENTARY INFORMATION: The following corrections are made to Document No. 89–27518 published on November 24, 1989, in 54 FR 48659–48664:

1. Page 48659, second column, line 24: The word "Land" begins a new paragraph.

2. Page 48659, second column, line 31: Delete entire line.

3. Page 48659, second column, line 44: After W½NW¼ add "W½SW¼,".

4. Page 48659, second column, last line: Line should read "Sec. 27, N½N½ NW¼."

5. Page 48659, third column, line 3: After E½NW¼, add "SW¼NW¼,".

6. Page 48659, third column, lines 14 and 15: The last legal description in line 14 which then continues on line 15 should read "E½NW¼SW¼SW¼,".

7. Page 48659, third column, line 23: The second legal description should read "S½NW¼SE¼SE¼,".

8. Page 48659, third column, line 24: Delete "S½" at end of line.

9. Page 48659, third column, line 25: The entire line should read "SE¼SE¼ SE¼SE¼, E½E½SW¼SE¼SE¼SE¼;".

10. Page 48659, third column, line 30: The comma after N½ should be deleted.

11. Page 48659, third column, line 33: Delete "E½SE¼" at end of line.

12. Page 48659, third column, line 34: Delete entire line except last two letters which read "N½".

13. Page 48659, third column, line 35: Change ";" to ",".

14. Page 48659, third column, line 41: The second legal description should read "N½NW¼NW¼SW¼,".

15. Page 48659, third column, line 46: The last letter in the line should read "¼".

16. Page 48659, third column, fourth line from bottom of page: The legal description which reads S½NW¼SW¼ NW¼ should be deleted.

17. Page 48660, first column, line 5: The first number should read "870033,".

18. Page 48660, third column, lines 53 and 54: Lines 53 and 54 should read "Sec. 12, that portion west of East Walker Road West (formerly known as Pine Grove Flat Road);".

19. Page 48661, first column: All 15 references to Pine Grove Flat Road should be changed to "East Walker Road West".

20. Page 48662, first column, line 56: The "E½SE¼," should read "E½ SW¼,".

21. Page 48662, second column, seventh line from bottom of page: The "N½NW¼," should read "N½NE¼,".

22. Page 48662, second column, fourth line from bottom of page: The "SW¼ NW¼," should read "SW¼NE¼,".

23. Page 48662, third column: After line 2 add the following:

"T. 2N., R. 31E.

Secs. 25–27 and 34–36, all."

24. Page 48663, second column: After line 19 add the following: "Sec. 7, Lots 1–3, E½NE¼, SE¼SW¼, SE¼;".

25. Page 48663, second column, thirteenth line from bottom of page: The "SE¼W¼," should read "SE¼NW¼,".

26. Page 48663, third column, line 46: the "S½N¼," should read "S½NE¼,".

27. Page 48664, second column, line 6: Between the second and third legal descriptions, add "NW¼NE¼,".

28. Page 48664, second column, line 10: After "Sec. 10," add "NE¼,".

29. Page 48664, second column, twelfth line from bottom of page: After N½ change ";" to read ",".

30. Page 48664, third column, line 32: The acres should read "704,682.275".

31. Page 48664, third column, line 35: The acres should read "270,208.633".

32. Page 48664, third column, line 36: The acres should read "181,050.698".

R.M. (Jim) Nelson,

Supervisor, Toiyabe National Forest, U.S. Forest Service.

Edward F. Spang,

State Director, Nevada, Bureau of Land Management.

[FR Doc. 90–2274 Filed 1–31–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Indian River Bay Watershed, Delaware; Finding of No Significant Impact

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Indian River Bay Watershed, Sussex County, Delaware.

FOR FURTHER INFORMATION CONTACT: Elesa K. Cottrell, State Conservationist, Soil Conservation Service, 9 E. Loockerman Street, Dover, Delaware, 19901, telephone (302) 678–4160.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Elesa K. Cottrell, State Conservationist has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include structures for water control, manure management systems, forest management practices, and accelerated technical assistance for land treatment.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Elesa K. Cottrell.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: January 25, 1990.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Elesa K. Cottrell,

State Conservationist.

[FR Doc. 90–2271 Filed 1–31–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 460]

Resolution and Order Approving the Application of the Port of Portland for a Special-Purpose Subzone Status at the Industrial Tool Plant of Automotive Industrial Marketing Corp. in Portland, Oregon; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Portland, grantee of FTZ 45, filed with the Foreign-Trade Zones Board (the Board) on July 20, 1987, requesting special-purpose subzone status for non-manufacturing operations at the warehousing and distribution facility of Automotive Industrial Marketing Corporation in Portland, Oregon, within the Portland Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application for non-manufacturing operations.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

To Establish a Foreign-Trade Subzone at the Automotive Industrial Marketing Corporation Plant in Portland, Oregon

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Portland, grantee of Foreign-Trade Zone No. 45, has made application (filed July 20, 1987, FTZ Docket 10–87, 52 FR 30699) in due and proper form to the Board for authority to establish a special-purpose subzone at the industrial tool processing/distribution (non-manufacturing) operation of Automotive Industrial Marketing Corporation (AIM) located in Portland, Oregon, within the Portland Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are be satisfied;

Now, Therefore, in accordance with the application filed July 20, 1987, the Board hereby authorizes the establishment of a subzone at the AIM plant in Portland, Oregon, designated on the records of the Board as Foreign-Trade Subzone No. 45B, at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the regulations issued thereunder, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations.

The grant is further subject to settlement locally by the District Director of Customs and Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC., this 24th day of January, 1990, pursuant to Order of the Board.

Foreign-Trade Zones Board

Eric I. Garfinkel,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

[FR Doc. 90-2239 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-053]

Birch 3-Ply Doorskins From Japan; Intent To Revoke Antidumping Finding

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

ACTION: Notice of Intent To Revoke Antidumping Finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on birch 3-ply doorskins from Japan. Interested parties who object to this revocation must submit their comments in writing not later than February 28, 1990.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1976, the Department of Commerce ("the Department") published an antidumping finding on birch 3-ply doorskins from Japan (41 FR 7389). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than February 28, 1990, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by February 28, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by February 28, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-2290 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-049]

Calcium Pantothenate From Japan; Intent To Revoke Antidumping Finding

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

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on calcium pantothenate from Japan. Interested parties who object to this revocation must submit their comments in writing not later than thirty days from the date of publication of this notice.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On January 17, 1974, the Department of Commerce ("the Department") published an antidumping finding on calcium pantothenate from Japan (39 FR 2086). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than thirty days from the date of publication of this notice, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by January 31, 1990, in accordance with the Department's notice of opportunity to request administrative review (55 FR 2398, January 24, 1990), or object to the Department's intent to revoke within thirty days from the date of publication of this notice, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-2376 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-056]

Melamine From Japan Intent To Revoke Antidumping Finding

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

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on melamine from Japan. Interested parties who object to this revocation must submit their comments in writing not later than February 28, 1990.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1977, the Department of Commerce ("the Department") published an antidumping finding on melamine from Japan (42 FR 6366). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than February 28, 1990, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by February 28, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by February 28, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-2291 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-050]

Racing Plates From Canada; Intent To Revoke Antidumping Finding

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

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on racing plates from Canada. Interested parties who object to this revocation must submit their comments in writing not later than February 28, 1990.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 1974, the Department of Commerce ("the Department") published an antidumping finding on racing plates from Canada (39 FR 7579). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than February 28, 1990, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by February 28, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by February 28, 1990, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-2295 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-701; C-307-702]

Electrical Conductor Aluminum Redraw Rod From Venezuela; Preliminary Affirmative Scope Ruling

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

ACTION: Preliminary affirmative scope ruling.

SUMMARY: On July 24, 1989, the Department of Commerce commended an inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended, to determine whether .250 inch electrical conductor aluminum redraw wire is covered by the antidumping and countervailing duty orders on electrical conductor aluminum redraw rod from Venezuela. We preliminarily determine that the product investigated falls within the scope of the orders. We invite interested parties to comment on this preliminary determination.

EFFECTIVE DATE: February 1, 1990.

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:

Background

On August 22, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 31903) antidumping and countervailing duty orders on electrical conductor aluminum redraw rod ("EC rod") from Venezuela. On June 15, 1989, counsel for Southwire Company, the petitioner, submitted an application to the Department alleging circumvention, in accordance with section 781(c) of the Tariff Act of 1930, as amended ("the Tariff Act"), of the antidumping and countervailing duty orders on EC rod from Venezuela. Petitioner claims that Suramerica de Aleaciones Laminadas, C.A. ("Sural") is performing a minor alteration of EC rod by drawing it into .250 inch electrical conductor aluminum redraw wire (".250 wire") in order to circumvent the orders.

On July 24, 1989, the Department commenced an inquiry and sent a questionnaire to Sural. On August 23, 1989 and September 28, 1989, respectively, the Department received responses to both the original questionnaire and a supplemental questionnaire sent on September 14, 1989.

Scope of the Antidumping and Countervailing Duty Orders

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and

Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

The product covered by the antidumping and countervailing duty orders is certain electrical conductor aluminum redraw rod, which is wrought rod of aluminum, electrically conductive and containing not less than 99 percent aluminum by weight. Until December 31, 1988, EC rod was classifiable under item numbers 618.1520 and 618.1540 of the *Tariff Schedules of the United States Annotated* ("TSUSA"). EC rod is currently classifiable under HTS item numbers 7604.10.3010, 7604.10.3050, 7604.29.3010, 7604.29.3050, 7605.11.0030 and 7605.21.0030. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Scope of the Inquiry

The product under investigation is .250 inch electrical conductor aluminum redraw wire used to produce wire that is then incorporated into electrical conductor cables. .250 wire is EC rod that has been processed through a wire drawing mill and, like EC rod, .250 wire is an intermediate product that must be further drawn for use in electrical conductor cable products. However, because it is only practical to use .250 wire in the production of smaller diameter wires, .250 wire does not completely substitute for EC rod which continues to be used for large and medium diameter wires.

Nature of the Inquiry

Section 781(c) of the Tariff Act provides that:

> (1) In general.—The class or kind of merchandise subject to—
>
> (A) An investigation under this title,
>
> (B) An antidumping duty order issued under section 736,
>
> (C) A finding issued under the Antidumping Act, 1921, or
>
> (D) A countervailing duty order issued under section 706 or section 303,
>
> shall include articles altered in form or appearance in minor respects [including raw agricultural products that have undergone minor processing], whether or not included in the same tariff classification.
>
> (2) Exception.—Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

We have reviewed the legislative history pertaining to this provision and have determined that certain factors must properly be considered before rendering a determination in accordance with section 781(c) of the Tariff Act. The report of the Committee on Finance, U.S. Senate, states:

> "In applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as the overall characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported product." S. Rep. No. 71, 100th Cong., 1st Sess. 100 (June 12, 1987).

The legislative history reflects Congress' intent that these criteria be considered in rendering a section 781(c) determination. Further, the report by the Committee on Ways and Means, U.S. House of Representatives, suggests that the Department must consider "a number of factors when determining whether an alteration results in a change in the class or kind of merchandise, and is therefore no longer a minor alteration." H.R. Rep. No. 40, 100th Cong., 1st Sess. 134 (1987).

The Department considers the above guidelines to be indicative of Congressional intent. Moreover, Congress cited examples of cases that section 781(c) of the Tariff Act was meant to address. These examples include portable electric typewriters from Japan ("PETs") where a minor alteration resulted in PETs with calculator or memory features being excluded from the scope of the existing order. The Senate Finance Committee noted [in this case] that it "intends this provision to prevent foreign producers from circumventing [existing orders] through the sale of * * * products with minor alterations that contain features or technologies not in use in the class or kind of merchandise imported into the U.S. at the time of the original investigation. Such * * * minor alterations would not result in the exemption of the imported merchandise from the [order], unless [Commerce] finds it unnecessary to include such products in the [order]." S. Rep. No. 71, 100th Cong., 1st Sess. 101 (1987).

The House Ways and Means Committee considered such altered products as cookware that has had a fire resistant coating applied prior to importation and steel sheet that has been temper rolled prior to importation to be minor alterations and as such might be included in the original antidumping and/or countervailing duty orders. H.R. Rep. No. 40, 100th Cong., 1st Sess. 134 (1987).

Based on the guidance provided in the legislative history, the Department has analyzed the following factors to determine whether the manufacture of .250 wire from EC rod fits the meaning of minor alteration in the Tariff Act.

Analysis

In the original petition, EC rod was described as "a solid round product of alloyed or unalloyed aluminum that is long in relation to cross section; typically, though not necessarily, .375 inch or greater in diameter, suitable for drawing into electrical conductor wire." By describing the product as not necessarily greater than .375 inch in diameter, the petition does not set diameter as a parameter by which to distinguish EC rod.

The International Trade Commission ("ITC"), in its final determination in "Certain Electrical Conductor Aluminum Redraw Rod from Venezuela: USITC Publication 2103; August 1988," defined EC rod in terms of diameter and specified EC rod as being .375 inch or greater in diameter. Although the TSUSA is not controlling in determining the scope of an order, it seems that for its description of EC rod the ITC relied in large part on the TSUSA, which defines aluminum rod as generally .375 inch or greater in diameter, except that it may be less than .375 inch in diameter if cut to length.

In the antidumping and countervailing duty orders, EC rod is described as wrought rod of aluminum, electrically conductive and containing not less than 99 percent aluminum by weight. This written description, which is dispositive of the scope, does not set specific guidelines with regard to diameter.

A. Physical Characteristics of the Product

The scope of the Department's orders covers an intermediate redraw product to be used in the production of finished wires. The ITC, in finding threat of material injury to the U.S. rod industry, characterized EC rod "as an intermediate product that is generally drawn into bare EC wire which is then stranded together around a steel or aluminum core to form bare aluminum stranded cabel." The original investigation concerned itself only with EC rod, and both the TSUSA and HTS would classify the .250 wire subject to the current inquiry as a wire product because it is less than .375 inch in diameter and in coils. However, the distinction between EC rod and .250 wire is largely one of tariff classification

and, according to section 781(c) of the Tariff Act, "antidumping and countervailing duty orders shall include articles altered in form or appearance in minor respects, whether or not included in the same tariff classification."

The only respect in which .250 wire is physically different from EC rod is that it has been passed once through a wire drawing mill; chemically, the two products are identical. Both are intermediate products designed to be redrawn into aluminum wire. They cannot be used "as is" but must undergo this further processing. In this respect, they are the same class or kind of merchandise.

B. Use of the Merchandise

Both .250 wire and EC rod are used for the same purpose—further drawing into electrical conductive strands of various sizes for use in manufacturing cable. Although Sural claims that use of .250 wire eliminates a step in the production process, it does not. The intermediate step (one pass through a drawing mill) is merely transferred from the United States to Sural in Venezuela, not eliminated. Moreover, the largest part of the market consists of sales of middle range diameter wires, and these can easily be produced with only one pass of EC rod through a drawing mill. Conversion of EC rod into .250 wire for the production of middle range diameter wires, though technically possible, is unnecessary and inefficient. Thus, for economic reasons, .250 wire is primarily used to manufacture small diameter wire.

C. Expectations of the Ultimate Consumer

Consumers of both EC rod and .250 wire expect to use products in the same way, as redraw stock. Both products are to be passed through a drawing mill in order to produce EC wire which is then stranded together to form cable.

D. Channels of Marketing

Over 90 percent of Sural's sales of .250 wire are to ACPC, a related party that uses this product to produce end products that it could produce with EC rod. Prior to the petition, Sural marketed EC rod through Alnor, a related party and Sural's sales agent in the United States, to unrelated U.S. customers. However, outside of Sural's relationship with ACPC, no significant market for .250 wire exists. Furthermore, it should be reiterated that prior to the Department's orders there were no sales of .250 wire to any parties whether related or unrelated.

E. Cost of Modification Relative to Total Value

We calculated the difference in the value added to EC rod through the production of .250 wire by using an average base metal price for 1988 and 1989 combined. We then added the adder price (fabrication costs plus profit) charged for EC rod. We performed the same exercise using the adder price for .250 wire. We divided each of these figures by the average base metal price to determine the percentage value added for each product. We subtracted the percentage value added to manufacture EC rod from the percentage value added to manufacture .250 wire and have determined that the difference relative to the total value of the product is less than 2.5 percent. (Since the precise figures are business proprietary and the actual figure is small, the Department is not able to provide a more specific figure.)

Preliminary Ruling

As a result of our inquiry, we preliminarily determine that .250 wire is included in the scope of the antidumping and countervailing duty orders on electrical conductor aluminum redraw rod from Venezuela within the meaning of section 781(c) of the Tariff Act. Our determination does not reach any conclusion as to whether respondents were intentionally seeking to evade or circumvent these orders.

The Department will instruct the Customs Service to suspend liquidation on all shipments of electrical conductor aluminum redraw wire .250 inch or greater in diameter and collect a cash deposit of antidumping and countervailing duties in accordance with the orders issued on August 22, 1988 on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Because of this determination, the merchandise subject to these orders is classifiable under the following additional HTS item numbers: 7605.11.0090, 7605.19.0000, 7605.21.0090 and 7605.29.0000.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on this preliminary ruling 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 brief. 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 § 355.38(e) of the Commerce regulations.

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, under § 355.38(c), are due.

The Department will publish its final determination in this inquiry, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This preliminary determination and notice are in accordance with section 781(c) of the Tariff Act (19 U.S.C. section 1677j).

Dated: January 26, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-2377 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-538-048]

Expanded Metal From Japan; Intent To Revoke Antidumping Finding

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

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on expanded metal from Japan. Interested parties who object to this revocation must submit their comments in writing not later than thirty days from the date of publication of this notice.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1974, the Department of Commerce ("the Department") published an antidumping finding on expanded metal from Japan (39 FR 1979). The Department has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this finding.

Opportunity to Object

Not later than thirty days from the date of publication of this notice, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by January 31, 1990, in accordance with the Department's notice of opportunity to request administrative review (55 FR 2398, January 24, 1990), or object to the Department's intent to revoke within thirty days from the date of publication of this notice, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–2378 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–001]

Potassium Permanganate From the People's Republic of China; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on potassium permanganate from the People's Republic of China. Interested parties who object to this revocation must submit their comments in writing not later than thirty days from the date of publication of this notice.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 1984, the Department of Commerce ("the Department") published an antidumping duty order on potassium permanganate from the People's Republic of China (49 FR 3897). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than thirty days from the date of publication of this notice, interested parties, as defined in § 353.2(i) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by January 31, 1990, in accordance with the Department's notice of opportunity to request administrative review (55 FR 2398, January 24, 1990), or object to the Department's intent to revoke within thirty days from the date of publication of this notice, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: January 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–2379 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–001]

Cotton Sheeting and Sateen From Peru; Intent To Revoke Countervailing Duty Order

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

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru. Interested parties who object to this revocation must submit their comments in writing no later than February 28, 1990.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce ("the Department") published in the **Federal Register** a countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501). The Department has not received a request to conduct an administrative review of the countervailing duty order on cotton sheeting and sateen from Peru for the past four consecutive annual anniversary months. This year is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Commerce Department's regulations, (19 CFR 355.25(d)(4)(i)(1989)), the Department is notifying the public of its intent to revoke this countervailing duty order.

Opportunity to Object

Not later than February 28, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by February 28, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with the Department's regulations, 19 CFR 355.25(d)(4)(1989).

Dated: Janauary 29, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90-2372 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-002]

Cotton Yarn From Peru; Intent To Revoke Countervailing Duty Order

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

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on cotton yarn from Peru. Interested parties who object to this revocation must submit their comments in writing no later than February 28, 1990.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce ("the Department") published in the **Federal Register** a countervailing duty order on cotton yarn from Peru (48 FR 4508). The Department has not received a request to conduct an administrative review of the countervailing duty order on cotton yarn from Peru for the past four consecutive annual anniversary months. This year is the fifth anniversary.

The Department may revoke an order if the Secretary of Commerce concludes that an order is no longer of interest to interested parties. Accordingly, as required by § 355.25(d)(4) of the Commerce Department's regulations (19 CFR 355.25(d)(4)(i)(1989)), the Department is notifying the public of its intent to revoke this countervailing duty order.

Opportunity To Object

Not later than February 28, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by February 28, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with the Department's regulations, 19 CFR 355.25(d)(4)(1989).

Dated: January 29, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90-2373 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Thiel College et al.

Pursuant to section 6(c) of the Education, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the Untied States.

Comments must comply with §§301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-298. *Applicant:* Thiel College, 75 College Avenue, Greenville, PA 16125. *Instrument:* Rapid Kinetics Accessory, Model SFA-11. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended use:* The instrument is an accessory to existing spectrophotometers being used to study the kinetics of fast reactions in solution. The research is concentrated on reactions of ionic species in aqueous solution, in which the half-life is as short as 0.5 seconds. In addition the instruments will be used for educational purposes in the courses Chemistry 31, Physical Chemistry—Dynamics; Chemistry 58, Problems in Chemistry and Chemistry 59, Independent Study. *Application received by Commissioner of Customs:* December 22, 1989.

Docket Number: 89-299. *Applicant:* University of Southern California, Department of Geological Sciences, Los Angeles, CA 90089-0740. *Instrument:* Isocarb Single Acid Bath Carbonate Preparation System. *Manufacturer:* VG Instruments, United Kingdom. *Intended use:* The instrument will be used with an existing mass spectrometer for the analysis of CO_2 for both oxygen and carbon isotopic composition. The carbon and oxygen isotopic composition of marine carbonate samples is the primary material being analyzed. The isotopic measurements made from these samples provide information about the nutrient and temperature distributions in which the carbonate was originally precipitated. *Application received by Commissioner of Customs:* December 27, 1989.

Docket Number: 89-300 *Applicant:* Lehman College, Bedford Park Blvd. West, Bronx, NY 10468. *Instrument:* Electron Microscope, Model H-7000. *Manufacturer:* Hitachi, Japan. *Intended use:* The instrument will be used to determine the effects of various heavy metals on cellular ultrastructure. Morphometric methods will be used to determine volume relationships in material from controls' EC_{50} cells and above and below the EC_{50} level. The instrument will be also be used in Biology 433. Techniques in Electron Microscopy, Biology 634. Cell Biology and Electron Microscopy and Biology U772. Electron Microscopy Cytology. The purpose of these courses is to introduce students to the use of this technique in the biological sciences. *Application received by Commissioner of Customs:* December 28, 1989.

Docket Number: 89-301. *Applicant:* Mayo Clinic, 200 First Street, SW, Rochester, MN 55905. *Instrument:* Electron Microscope, Model JEM-1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended use:* The instrument will be used for the following research:

(1) Studies on the cytoskeleton of cultured cells, especially as it relates to the centrosome, mitotic spindle poles, and microtubule complex.

(2) Early localization of *Staphylococcus aureus* in the epiphysis utilizing rabbits as a model system for osteomyelitis.

(3) Studies on the cellular integration of bone with metallic implants.

(4) Identification of ultrastructural characteristics of large multinucleated muscle cells (myoballs) grown in cell culture.

(5) Identification of cellular remodeling activity on the left ventricle after infarction.

(6) Comparisons of the morphology of adrenal cells grown in culture from a variety of animal species.

Application received by Commissioner of Customs: December 29, 1989.

Docket Number: 90-001. *Applicant:* VA Medical Center, 4801 Linwood Blvd., Kansas City, MO 64128. *Instrument:* OPT 175 High Intensity Light Source and

Models MG 5000 and MG 5000/M Hyperscan Accessories for Stopped-Flow Spectrophotometer. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended use:* The instrument will be used for studies of a group of enzymes of typical pyridine-nucleotide linked dehydrogenase, specifically focussed on L-glutamate dehydrogenase from bovine liver and from Clostridium symbosium. The research will be conducted to determine the mechanisms and structure/function relationships of enzyme catalysis. *Application received by Commissioner of Customs:* January 4, 1990.

Docket Number: 90–002. *Applicant:* University of Florida, Department of Chemistry, Gainesville, FL 32611–2046. *Instrument:* Mass Spectrometer, Model MAT 90. *Manufacturer:* Finnigan MAT, West Germany. *Intended use:* The instrument will be used in support of chemical research for determination of the chemical struture and molecular formula of novel chemicals synthesized within the organic and inorganic chemistry divisions. The data generated will be used in conjunction with data from other techniques to confirm synthetic structures and elucidate reaction pathways. It will also be used in the identification of the composition of unknown substances that may appear as a result of chemical reactions that are carried out during the normal course of chemical research. In addition, the instrument will be used as an integral part of the undergraduate and graduate curriculum by providing example spectra for courses, a modern instrument for training of graduate students specializing in mass spectometry and training in the capabilities of modern mass spectrometry for students specializing in synthesis and other chemical research areas. *Application received by Commissioner of Customs:* January 4, 1990.

Docket Number: 90–003. *Applicant:* University of Alaska-Fairbanks, Geophysical Institute, Fairbanks, AK 99775–0800. *Instrument:* Fixed Frequency HF Radar System. *Manufacturer:* Department of Physics, University of Adelaide, Australia. *Intended use:* The instrument will be used to measure motions due to atmospheric waves and turbulence at heights of 60 to 100 km above the surface. The purpose of the study is to identify the nature and magnitude of these wind and density fluctuations and their effects on the environment and the vehicles that use it. *Application received by Commissioner of Customs:* January 5, 1990.

Docket Number: 90–004. *Applicant:* Tufts University, U.S. Department of Agriculture, Human Nutrition Research Center on Aging, 711 Washington Street, Boston, MA 02111. *Instrument:* Mass Spectrometer, Model SIRA 10. *Manufacturer:* VG Isotech, United Kingdom. *Intended use:* The instrument will be used for study of the physiological process of aging and how nutrition and exercise intervene in this process. *Application received by Commissioner of Customs:* January 8, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–2385 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

University of California, Berkeley; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–204. *Applicant:* University of California, Berkeley, CA 94720. *Instrument:* Stable Isotope Ratio Mass Spectrometer. *Manufacturer:* VG Isogas, United Kingdom. *Intended use:* See notice at 54 FR 38423, September 18, 1989.

Comments: None received. *Decision:* Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (November 3, 1988). *Reasons:* The foreign instrument provides automated precise measurement of 34s/32s on SF_6.

This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where the domestic manufacturer, as in this case, in response to a formal request for quotation was unable to provide an instrument within a reasonable length of time, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–2386 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M¼

Auto Parts Industry Public Hearing

AGENCY: International Trade Administration, Commerce.

DATE AND LOCATION: The hearing will begin at 9:30 a.m. on Monday, February 26, 1990 in the auditorium at the U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution, Washington, DC.

SUMMARY: This is to advise the public that the International Trade Administration's Trade Development sector will hold a public hearing to: (1) Assess the degree of progress U.S. auto parts suppliers have made in selling to Japanese auto manufacturers; including successful approaches and unproductive efforts; and (2) identify remaining barriers which hinder increases in sales by U.S. auto parts suppliers to Japanese manufacturers. Other government agencies will be represented. Interested persons are invited to present written or oral views regarding any issue which relates to this matter.

SUPPLEMENTARY INFORMATION: The International Trade Administration's Trade Development sector is holding a public hearing to solicit views relating to U.S.-Japan auto parts trade. The information and opinions obtained from the public hearing will be used to supplement the findings of the Office of Automotive Affairs and Consumer Goods in determining the need for future efforts on behalf of the U.S. auto parts industry.

Persons who wish to participate in the hearing must submit a written request to Mary A. Toman, Deputy Assistant Secretary for Automotive Affairs and Consumer Goods, Department of Commerce, room 4324, Washington, DC 20230, five (5) days prior to the date of the public hearing. Requests should contain: (1) the person's name, title, affiliation, address and telephone number; (2) the number of participants; and (3) a detailed list of points to be presented. Oral presentations will be limited to those points raised in your written comments. Written comments from individuals unable to attend the hearing must be submitted to Mary A. Toman at the above address no later than February 12, 1990. Those persons wishing to appear at the hearing will be notified of the time allocation for their presentation.

FOR FURTHER INFORMATION CONTACT: Stuart Keitz or Ben Turner, U.S. Department of Commerce, International Trade Administration, Trade Development, Office of Automotive Affairs and Consumer Goods, room 4036, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 377-0554.

Dated: January 24, 1990.

Michael P. Skarzynski,

Assistant Secretary for Trade Development.

[FR Doc. 90-2240 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DR-M

Advisory Committee on the European Community Approach to Standards, Testing and Certification in 1992: Notice of Establishment and Opportunity To Provide Written Comments

AGENCY: International Administration, Commerce.

ACTION: Notice and opportunity to provide written comments.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992 (the Committee) is in the public interest in connection with the performance of duties imposed on the Department by law.

DATES: Written comments must be received by the Commerce Department by February 16, 1990.

SUPPLEMENTARY INFORMATION: The Committee will advise the Secretary of Commerce and keep him informed of the European Community's 1992 standards-related activities which are likely to have a substantial impact on U.S. exports to the Community. In particular, the Committee will provide essential advice regarding the EC '92 program to create a single standards policy; the impact on U.S. competitiveness resulting from the Community's program; and the strategies for improving the coordination and cooperation of U.S. federal, state, local and private sector standards activities. This advice will assist the Secretary in identifying standards, testing procedures and certification processes which may substantially affect the commerce of the United States and in representing U.S. interests to the EC.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The Committee will consist of approximately forty (40) members to be appointed by the Secretary from among private U.S. citizens to assure a balanced representation of standards, testing, and certification interests and points of view.

The Committee's charter will be filed under the Federal Advisory Committee Act 15 days from the date of publication of this notice. Due to the rapid development of the European Community's 1992 program, particularly in the standards-related area, it is essential that the Committee be established and operating to inform the Secretary without delay. Therefore, interested persons are invited to submit comments regarding the establishment of this Committee. Written comments (original plus 10 copies) should be submitted to: Charles M. Ludolph, Director, Office of European Community Affairs, Room 3036, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 377-5276, no later than 15 days following the publication of this Notice.

Dated: January 26, 1990.

J. Michael Farren,

Under Secretary for International Trade.

[FR Doc. 90-2241 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DA-M

[C-201-009]

Yarns of Polypropylene Fibers from Mexico; Intent to Terminate Suspended Investigation

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

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on yarns of polypropylene fibers from Mexico. Interested parties who object to this termination must submit their comments in writing not later than February 28, 1990.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION: .

Background

On February 7, 1983, the Department of Commerce ("the Department") published an agreement suspending the countervailing duty investigation on yarns of polypropylene fibers from Mexico (48 FR 5581).

The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on yarns of polypropylene fibers from Mexico for more than four consecutive annual anniversary months.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties. Accordingly, as required by 19 CFR 355.25, the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than February 28, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to terminate by February 28, 1990, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with § 355.25(d) of the Department's regulations.

Dated: January 26, 1990.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–2381 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

USDC, NOAA, et al., Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 89–224. *Applicant:* USDCC, NOAA, National Marine Fisheries Service, Pascagoula, MS 39568–1207. *Instrument:* Digital Fishing Measuirng Board, Model FMB–IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* See notice at 54 FR 41322, October 6, 1989. *Reasons:* The foreign article provides a waterproof multiplexed data capture station for logging fish biological data in situ.

Docket Number: 89–228. *Applicant:* Alabama A&M University, Normal, AL 35762. *Instrument:* Structural Loading Frame & Experimental Set-ups. *Manufacturer:* Hi-Tech Scientific, Ltd. United Kingdom. *Intended Use:* See notice at 54 FR 41322, October 6, 1989. *Reasons:* The foreign apparatus facilitates theory of structure and strength of materials studies.

Docket Number: 89–166. *Applicant:* University of Virginia, Charlottesville, VA 22901. *Instrument:* Scanning Electronic Microscope, Model JSM–840A/FCS. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 54 FR 30788, July 24, 1989. *Reasons:* The foreign article provides a guaranteed resolution of 4.0 nm (secondary electron image), wavelength dispersive spectrometer with vertically mounted optical microscope.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–2382 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

Purdue University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89–033R. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Mass Spectrometer and Data System, Model MS–25. *Manufacturer:* Kratos, United Kingdom. *Intended Use:* See notice at 54 FR 4875, January 31, 1989.

Comments: None received. *Decision:* Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with subsection 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (July 6, 1988). *Reasons:* The foreign instrument provides a fully laminated magnet with a scan speed to 0.1 second/decade. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, subsection 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The applicant has provided satisfactory evidence that it formally requested a bid by the domestic manufacturer but received no reply. Accordingly, we conclude that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–2383 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

South Dakota State University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, in being manufactured in the United States.

Docket Number: 89–114. *Applicant:* South Dakota State University, Brookings, SD 57007–0896. *Instrument:* Mass Spectrometer, Model MS 25. *Manufacturer:* Kratos Analytical Inc., United Kingdom. *Intended Use:* See notice at 54 FR 15536, April 18, 1989. *Reasons:* The foreign instrument provides a fully laminated magnet and

scan rates from 0.1 to 1000 seconds/decade. U.S. Customs has denied duty-waiver for the liquid chromatograph portion of the system pursuant to 19 CFR 301.4 since the applicant is not the importer of record. *Advice Submitted By:* National Institutes of Health, August 29, 1989.

Docket Number: 89–212. *Applicant:* University of California at San Diego, La Jolla, CA 92093–0213. *Instrument:* Heave Compensator, Model Hippy 120, Version B. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* See notice at 54 FR 38543, September 19, 1989. *Reasons:* The foreign instrument provides (1) high durability (MTBF of 1 year) and low power consumption (0.25W) for in situ meteorological measurements and (2) a bandwidth optimized to match the frequency spectrum of typical ocean waves. *Advice Submitted By:* National Oceanic and Atmospheric Administration, November 27, 1989.

Docket Number: 89–222. *Applicant:* Columbia University, Palisades, NY 10964. *Instrument:* Gas Mass Spectrometer, Model VG 5400. *Manufacturer:* VG Isotopes, United Kingdom. *Intended Use:* See notice at 54 FR 40159, September 29, 1989. *Reasons:* The foreign instrument determines isotopic ratios of noble gases and provides a reproducibility for $^3He/^4He$ ratios of 0.2% for 0.4cc STP samples of air. *Advice Submitted By:* National Institute of Standards and Technology, November 6, 1989.

Docket Number: 89–231. *Applicant:* Health Research, Inc., Albany, NY 12237. *Instrument:* Stable Isotope Ratio Mass Spectrometer, Model Prism Series II. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 54 CFR 41322, October 6, 1989. *Reasons:* The foreign instrument provides an internal reproducibility of 0.006‰ for 3 bar μ1 samples of CO_2. *Advice Submitted By:* National Institute of Standards and Technology, November 7, 1989.

The National Institutes of Health, National Institute of Standards and Technology and National Oceanic and Atmospheric Administration advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–2384 Filed 1–31–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–037]

Certain Cotton Yarn Products From Brazil; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 23, 1988, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain cotton yarn products from Brazil. We have now completed that review and determine the net subsidy to be *de minimis* for five firms, 12.15 percent *ad valorem* for Cotonoficio Guilherme Giorgi, and 2.56 percent *ad valorem* for all other firms during the period May 18, 1984 through December 31, 1984. We also determine the net subsidy to be 22.30 percent *ad valorem* for Kanebo, 7.75 percent *ad valorem* for Cotonificio Guilherme Giorgi, and 12.82 percent *ad valorem* for all other firms during the period January 1, 1985 through December 31, 1985.

EFFECTIVE DATE: February 1, 1990.

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

SUPPLEMENTARY INFORMATION:

Background

On March 23, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 9465) the preliminary results of its administrative review of the countervailing duty order on certain cotton yarn products from Brazil (42 FR 14089; March 15, 1977). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under items 301.01 through 301.98, inclusive, and under item 302.— with statistical suffixes 20, 22, and 24 of the *Tariff Schedules of the United States.* This merchandise is currently classifiable under HTS items 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00. The HTS items are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period May 18, 1984 through December 31, 1985 and 20 programs: (1) CACEX export financing; (2) an income tax exemption for export earnings; (3) the IPI export credit premium; (4) CIC–CREGE 14–11 financing; (5) BEFIEX; (6) Price Equalization Program; (7) FST financing; (8) incentives for trading companies ("Resolution 883"); (9) accelerated depreciation for Brazilian-made capital goods; (10) tax reductions on export production equipment ("CIEX"); (11) export financing under Resolution 68 ("FINEX"); (12) duty-free treatment and tax exemption on equipment used in export production ("CDI"); (13) export financing under the Fundo Nacional de Participacoes ("FUNPAR"); (14) exemption from state-administered value-added taxes ("CM") on domestic sales; (15) export production financing ("PROEX"); (16) benefits from import substitution ("PROSIM"); (17) financing for the storage of merchandise destined for export ("Resolution 330"); (18) Green-Yellow drawback; (19) federal cotton auctions; and (20) federal stock (EGF) loans. Our analysis and findings for each of these programs is the same as described in our preliminary results notice except where stated within the comments.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the Government of

Brazil and the American Yarn Spinners Association ("AYSA").

Comment 1: The Brazilian government argues that the Department should use for its short-term loan benchmark the annual interest rate in effect on the date that each loan was obtained instead of the average annual rate for the review period. In a high-inflation economy, such as exists in Brazil, an average rate for the review period distorts the actual interest differentials on each loan. In *Canned Tuna from the Philippines; Final Results of Countervailing Duty Administrative Review* (52 FR 43758; December 4, 1986), the Department used quarterly, rather than annual, average rates to derive a more accurate benchmark for a high-inflation economy. Similarly, in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Steel Wire Nails from Thailand* (52 FR 36987; October 2, 1987), the Department stated that: "Using six-month benchmark rates * * * is not warranted in this instance, because no major fluctuation in the Thai economy occurred during the time the loans were obtained." Since there was a "major fluctuation" in Brazilian interest rates during the review period, the Brazilian government argues that the Department should depart from its normal practice of using annual average benchmark rates.

Department's Position: In *Thai Nails*, we found that the relative stability in Thai credit markets justified the use of an annual average interest rate as a benchmark rather than using the commercial interest rates available at the time the company actually borrows. Although it is true that in Brazil, unlike in Thailand, interest rates fluctuated considerably during the review period, we continue to believe that an average annual interest rate is the appropriate benchmark in this case.

The predominant short-term lending instrument commercially available in Brazil during the review period was a 90-day discount of accounts receivable. Our benchmark is a yearly average of these discount rates, which are published weekly in *Analise/Business Trends*. In order to borrow a given amount for one year during the review period, a commercial borrower in Brazil would have been required to roll over a 90-day discounted loan three times. Each rollover would consist of discounting the original principal by the commercial discount rate prevailing on the day of the rollover. Given that discount rates varied considerably from one week to the next in Brazil during the review period, it is unlikely that any of the rollover rates would be equal. To assume that the discount rate in effect on the day the loan was originally contracted would apply to the three subsequent rollovers is unfounded. If the loan were contracted at a time that the discount rate was below the yearly average, applying the less-than-average rate to the entire year would understate the benchmark. Likewise, if the loan were contracted at a time that the discount rate was above the yearly average, applying the greater-than-average rate to the entire year would overstate the benchmark. Therefore, an annual average benchmark is the best reflection of the actual commercial cost of borrowing at variable rates over a twelve-month period.

In *Philippine Tuna*, we used the quarterly commercial benchmark rates because there were major fluctuations in Philippine interest rates during the review period and, unlike in Brazil, one-year fixed-rate loans were a commercially-available alternative.

Comment 2: The Brazilian government contends that the Department should use as its short-term loan benchmark the average commercial bank lending rates published by Morgan Guaranty Trust Company in its *World Financial Markets* instead of the average of weekly accounts receivable discount figures published in *Analise/Business Trends*. Commercial bank lending practices are most similar to Resolution 674/882 financing, the source of Morgan Guaranty's figures.

Department's Position: We have considered and rejected this argument in other Brazilian countervailing duty cases. See, *e.g., Certain Carbon Steel Products From Brazil; Final Results of Countervailing Duty Administrative Review* (52 FR 829; January 9, 1987). The Brazilian government has provided neither new evidence nor new arguments which convince us to reconsider this issue. We continue to believe that an average of the weekly accounts receivable discount rates is the appropriate basis for deriving our benchmark.

Comment 3: The Brazilian government argues that the Department overstated the short-term loan interest rate benchmark by compounding monthly interest rates. If the Department continues to use the annual average discount rate as its benchmark, it should adjust its compounding methodology. Since discounting requires advance payment of interest, compounding a nominal monthly interest rate to obtain an annual effective interest rate results in an artificial benchmark that overstates the benefit. The Department should calculate an effective rate for the ninety-day discount of accounts receivable and multiply this rate by four to annualize the benchmark. This calculation would take into account the quarterly rollover of principal.

Department's Position: After further review, we have adjusted our methodology to better reflect commercial bank lending practices in Brazil during the review period. The most common form of short-term commercial financing in Brazil during the review period was a 90-day discount of accounts receivable. Typically, a loan was quoted at a nominal monthly discount rate, meaning that interest was paid up front. However, if a firm in Brazil wanted to secure a loan for one year, a bank would roll over the loan each quarter by discounting the original principal based on the monthly nominal rate in effect at the beginning of each quarter that the loan is outstanding. Therefore, we have calculated an annual effective interest rate benchmark by following the methodology prevalent among Brazilian commercial banks during the review period. We multiplied the average monthly discount rates in 1983 and 1984 by three to obtain a 90-day discount rate. We then converted the 90-day discount rate to an interest rate. Finally, we compounded this rate four times to obtain an annual effective interest rate. On this basis, we have revised our benchmarks from 159.73 percent to 183.55 percent for 1983, and from 324.12 percent to 428.02 percent for 1984. Using the revised benchmark, we determine the benefit from CACEX export financing for 1984 to be 9.75 percent *ad valorem* for Cotonificio Guilherme Giorgi, and 1.30 percent *ad valorem* for all other companies in 1984, except those companies with *de minimis* aggregate benefits. For 1985, we determine the benefit to be 5.33 percent *ad valorem* for Kanebo, 1.07 percent *ad valorem* for Cotonificio Guilherme Giorgi and 3.29 percent *ad valorem* for all other companies. *See* also our responses to Comments 9 and 10.

Comment 4: The Brazilian government claims that, in calculating the short-term interest rate benchmark, the Department should not include the tax on financial transactions (the "IOF"). The IOF functions as an indirect tax, and neither the exemption nor the rebate of an indirect tax is considered a subsidy under the General Agreements on Tariffs and Trade and U.S. law. Inclusion of the IOF in the benchmark improperly countervails an exemption of an indirect tax applicable to exports.

Department's Position: We have considered and rejected this argument in

other Brazilian countervailing duty cases. *See, e.g., Certain Castor Oil Products From Brazil; Final Results of Countervailing Duty Administrative Review* (48 FR 40534; September 8, 1983).The Brazilian government has provided neither new evidence nor new arguments which convince us to reconsider this issue.

Comment 5: The Brazilian government argues that the Department failed to take into account a change in the program of preferential working-capital financing for exports, administered by CACEX and the Banco do Brasil, in calculating the duty deposit rate. During the review period cotton yarn exporters made interest payments on loans from this program authorized under Resolutions 674, 882, 950 and 1009. Each successive Resolution superseded and amended the previous one.

Under Resolution 674, there was an interest rate ceiling on these loans of 60 percent. On January 1, 1984, Resolution 882 changed the payment date for both interest and principal to the expiration date of the loan without changing the interest rate ceiling. On August 21, 1984, Resolution 950 made these loans available at prevailing market interest rates less an equalization fee of 10 percentage points paid by the Banco do Brasil to the lending bank.

On May 2, 1985, Resolution 1009 changed the equalization fee to 15 percentage points. Under the Department's methodology, this results in an interest differential of 16.5 percent (the equalization fee plus the 1.5 percent IOF). The Department should calculate the deposit rate based on borrowing patterns of each firm in 1985 at the applicable interest differential of 16.5 percent.

Department's Position: We agree and have adjusted our calculations accordingly. On this basis, we determine that for purposes of cash deposits of estimated countervailing duties the benefit from this program is 1.44 percent *ad valorem* for Cotonificio Guilherme Giorgi, 3.45 percent *ad valorem* for Kanebo, and 1.28 percent *ad valorem* for all other firms.

Comment 6: The Brazilian government claims that the Department incorrectly allocated the benefits from the income tax exemption for export earnings program over export sales instead of total sales. Since the program rebates direct taxes, it is a domestic subsidy, which requires the Department to allocate the benefit over total sales. Further, effective January 1, 1988, the Government of Brazil decreed that export earnings are no longer fully exempt from income taxes. The Department should take into account this change in calculating the cash deposit rate for this program.

Department's Position: We have considered and rejected the first argument in other Brazilian countervailing duty cases. *See, e.g., Certain Carbon Steel Products From Brazil (op. cit.).* The Brazilian government has provided neither new evidence nor new arguments which convince us to reconsider this issue. Regarding any changes in this program, we do not have sufficient information to recalculate the cash deposit rate. The Government of Brazil provided neither the official decree establishing the change nor an explanation of the effect of the change on this case.

Comment 7: The Brazilian government contends that the Department incorrectly found that the export tax offsets only the countervailable benefit from the IPI export credit premium. The Brazilian government instituted a staged reduction of the IPI export credit premium from 11 percent in 1984 to zero effective May 1, 1985. During this period, however, the companies paid an export tax of 11 percent, which was greater than the average IPI export credit premium received. Since section 771(6) of the Tariff Act requires the Department to consider the full amount of export taxes paid during the review period, the Department should count the overpayment as an offset to the gross subsidy from all programs. In recent, notices, the Department calculated the total amount of net subsidy by subtracting the total amount of export taxes paid. *See, e.g., Certain Carbon Steel Products From Brazil (op. cit.), Certain Stainless Steel Products From Brazil; Final Results of Countervailing Duty Administrative Review and Renegotiation of Suspension Agreement* (51 FR 45371; December 18, 1986), and *Certain Tool Steel Products From Brazil; Final Results of Countervailing Duty Administrative Review and Renegotiation of Suspension Agreement* (51 FR 45376; December 18, 1986). The Department should follow these precedents in this case.

Department's Position: We disagree. Section 771(6)(C) of the Tariff Act provides that:

> for the purpose of determining the net subsidy, the administering authority may subtract from the gross subsidy the amount of * * * export taxes, duties or other charges levied on the export of the merchandise to the United States *specifically intended to offset the subsidies received* (emphasis added).

The export tax that the Brazilian government is referring to was specifically intended to offset the subsidy received by each company from the IPI export credit premium. Therefore, we have offset completely only the subsidy received by each company from the IPI export credit premium program.

In the suspended investigations of *Tool Steel* and *Stainless Steel,* the Brazilian government imposed an export tax with the intent of offsetting the net subsidy on the merchandise exported to the United States. This export tax was established in accordance with section 704(b)(1) of the Tariff Act, which provides that:

> The administering authority may suspend an investigation if the government of the country in which the subsidy practice is alleged to occur agrees, * * * to eliminate the subsidy completely or to offset completely the amount of net subsidy, with respect to that mechandise exported directly or indirectly to the United States, within 6 months after the date on which the investigation is suspended, * * *

Therefore, we allowed the export taxes in these cases to offset the total net subsidy.

In *Carbon Steel,* the Brazilian government, after unilaterally imposing a 27.42 percent export tax on shipments of certain carbon steel products between publication of the preliminary and final determinations, requested that the Department enter into a suspension agreement. While we exercised our discretion not to enter into a suspension agreement based on an export tax, we did allow the export tax because it was specifically intended to offset the total net subsidy on the merchandise exported to the United States.

Comment 8: The Brazilian government contends that export taxes are specifically contemplated by U.S. law and that the Department should not reconsider whether these taxes are permissible offsets. Furthermore, as section 771(6)(C) of the Tariff Act clearly indicates, Congress has concluded that export taxes, levied with the specific intent to offset subsidies, do serve the "larger purpose of the countervailing duty law," a phrase the Department used in its preliminary results. The Department may not defy clear congressional intent.

Department's Position: We determine for purposes of this review that the IPI export tax meets the criteria set forth in section 771(6)(C) and is, therefore, a permissible offset. Nonetheless, we believe that we have the discretion to determine whether offset taxes serve the larger purpose of the countervailing duty law. Section 771(6)(C) states: "(f) or the purpose of determining the net subsidy, the administering authority *may* subtract * * * export taxes, duties, or other changes * * *" (emphasis added).

Therefore, we believe that Congress did not intend the export tax offset to be automatic.

Comment 9: The Brazilian government argues that loans issued pursuant to the Banco do Brasil's CIC–CREGE 14–11 circular do not constitute a government program and, therefore, cannot confer a subsidy on exports of cotton yarn. The Banco do Brasil receives no financial support from the Government of Brazil and operates the program in a manner consistent with commercial considerations. Even assuming, *arguendo,* that the program is countervailable, the Department has overstated the benefit by using an incorrect benchmark (see Comment 3).

Department's Position: We have considered and rejected the first argument in other Brazilian countervailing duty cases. *See, e.g., Final Affirmative Countervailing Duty Determination; Brass Sheet and Strip From Brazil* (51 FR 40837; November 10, 1986). The Brazilian government has provided neither new evidence nor new arguments necessary for us to reconsider this issue. Regarding the second argument, we revised our benchmark, as explained in our response to Comment 3, and adjusted our calculations accordingly. In addition, we discovered an error in our calculations that understated the benefit. After adjusting for both the error and the revised benchmark, we determine the benefit from this program for 1984 to be 2.29 percent *ad valorem* for Cotonificio Guilherme Giorgi, and 0.01 percent *ad valorem* for all other companies in 1984, except those companies with *de minimis* aggregate benefits; and 0.03 percent *ad valorem* in 1985 for all companies except Kanebo and Cotonificio Guilherme Giorgi, who had no benefits attributable to this program.

Comment 10: The Brazilian government argues that the Department has overstated the benefit from the FST financing program by using an incorrect benchmark (see Comment 3).

Department's Position: After making adjustments using our revised benchmark (see our response to Comment 3), we determine the benefit from this program for 1984 to be zero for Cotonificio Guilherme Giorgi, and 0.03 percent *ad valorem* for all other companies in 1984, except those companies with *de minimis* aggregate benefits; and 0.01 percent *ad valorem* for all other companies in 1985, except Kanebo and Cotonificio Guilherme Giorgi, who had no benefits attributable to this program.

Comment 11: The Brazilian government argues that the Department incorrectly determined that the Price Equalization Program (PEP) is countervailable. The PEP, which was implemented as an import substitution program, did not confer any benefit on cotton yarn producers. The PEP was established to eliminate a temporary domestic oversupply of raw cotton by encouraging the use of domestic cotton in exports. It was operated in a manner consistent with item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Applications of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("GATT"), which states:

> The delivery by government or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favorable than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, *if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters* (emphasis added).

The Department has determined in past countervailing duty cases that the intent of the exception to item (d) is to permit an import substitution program without giving rise to a subsidy. In the *Final Negative Countervailing Duty Determination; Certain Stel Wire Nails from the Republic of Korea* (47 FR 39549; September 8, 1982), the Department held that "price preferences for inputs to be used in the production of export goods constitute a subsidy only if the preference lowers the price of that input below that which the input purchaser would pay on world markets." Similarly, in the *Final Affirmative Countervailing Duty Determination; Certain Steel Products From the Federal Republic of Germany* (47 FR 39345; September 7, 1982), the Department states: "* * * the price charged for subsidized FRG coal certainly does not undercut the freely available market price * * * Therefore, non-FRG purchasers of subsidized FRG coal do not benefit from FRG coal subsidies."

In fact, in its preliminary results notice the Department agreed in principle that the PEP itself does not constitue a subsidy according to item (d):

> If Brazilian exporters of cotton yarn had actually imported raw cotton in commercial quantities during the review period, we could have considered such imports as the commercially available alternative to domestic raw cotton (in which case the PEP might have been consistent with item (d)). However, because of import restrictions imposed by the Government of Brazil, cotton yarn exporters did not import raw cotton during the period of review.

Respondents argue that it is improper for the Department to assign such a restrictive interpretation to item (d). Even if a government instituted a program that banned imports of a good and offered exporters the same good at the world market price, such a program would not be a subsidy.

However, even with this restrictive interpretation, the Department's rationale for finding that the PEP confers a countervailable subsidy is based on the erroneous assumption that raw cotton was not imported. No restrictions on the importation of raw cotton existed during the review period. As shown by numerous import documents submitted with the comments on the preliminary results, cotton yarn producers imported raw cotton in amounts exceeding those which were distributed under the PEP. Raw cotton was impoted duty-free by cotton yarn producers under Brazil's suspension drawback system, which provides exemption from all duties if the raw cotton is physically incorporated into the final export product. The suspension drawback system allowed producers to import raw cotton at the world market price. Therefore, the commercial alternative to the PEP program was to import raw cotton at the world market price.

Conversely, AYSA argues that the Department correctly found the PEP countervailable. The PEP provided a specific quantity of raw cotton to yarn producers at a price that was significantly lower than both the internal market price and the world market price, and only exporters were able to purchase the raw cotton through the PEP. Furthermore, the Department was correct in using the internal price of raw cotton as its benchmark for purposes of calculating the benefit.

Department's Position: We disagree with respondent. The Brazilian government's decision to insulate its cotton producers from foreign competition placed domestic users of cotton at a disadvantage vis-a-vis competitors abroad by raising the price of domestic cotton. During the review period, Brazilian yarn exporters were able to overcome this competitive disadvantage in two ways: duty drawback and the PEP.

Imported cotton in Brazil is subject to normal cutoms duties. By using duty drawback, a practice acceptable under U.S. countervailing duty law and the GATT, Brazilian yarn exporters were exempted from normal customs duties on raw cotton provided that the cotton was processed into yarn and re-exported. Alternatively, under the PEP, the Brazilian government sold cotton

exclusively to yarn exporters at a price well below the price commercially available in the domestic market. The PEP was an instrument used by the brazilian government to ameliorate the deleterious effects of high-priced domestic cotton on a specific group of downstream users.

The circumstances in both *FRG Steel Products (op.cit.)* and *Korean nails (op.cit.)* differ from those in this case. In *FRG Steel Products*, there was no evidence of preferential pricing of imputs. Rather, the coal subsidies and coal import restrictions were part of a comprehensive program designed to assist the Federal Republic of Germany's coal industry, from which steel producers received no benefits. In fact, steel producers and other users of coal in the Federal Republic of Germany were required to pay a slight premium over world prices.

In *Korean Nails*, the Korean producers of nails for export had access to wire rod from foreign as well as domestic sources at comparable prices. Although afforded the opportunity through tariff protection to charge high prices for wire rod used in the manufacture of products sold domestically, POSCO (an integrated steel producer which is largely government owned) and other Korean producers of wire rod chose to lower their prices to exporters of nails and compete with foreign-sourced wire rod purchased under duty drawback. We concluded that "the different prices for purchasers do not arise from a scheme to subsidize exports, but rather are a commercial response to a segmented market, one segment being protected and the other fully open to foreign competition." We further stated that "this dual pricing system reflects strictly economic motivations [of the wire rod producers] rather than a desire of the Government of Korea (the owners of POSCO) to subsidize nail exports."

We noted in addition that our conclusion regarding the dual pricing system was consistent with the principle contained in item (d). However, our decision not to countervail the Korean pricing scheme was not made solely on the basis of item (d). Rather, our decision was based in large part on a determination that POSCO was acting in a commercially reasonable fashion by instituting a dual-pricing system. As support for this, we stated that two privately-owned Korean wire rod producers also had dual-pricing systems in place. These facts led us to conclude that the Korean government was not acting to subsidize exports.

In this case, the fact pattern is different. Private sellers of raw cotton in Brazil did not institute a dual-pricing scheme. Instead, the Brazilian government intervened to ensure that Brazilian yarn exporters could continue to use domestically-sourced cotton while cotton producers continued to enjoy the full benefits of tariff protection. Thus, the Brazilian government's decision to establish the PEP and sell raw cotton destined for export production at low prices made possible exports that otherwise would not have occurred. Without this direct government action, cotton yarn exporters would have had to pay the high domestic price for Brazilian raw cotton.

In determining whether item (d) is applicable to the identification and measurement of an export subsidy from this type of program, we have examined the law and its legislative history. Section 771(5) of the Tariff Act states, in relevant part: "the term 'subsidy' has the same meaning as the term 'bounty or grant' as that term is used in section 303, and includes, *but is not limited to*, the following: (i) any export subsidy described in Annex A to the Agreement (relating to the Illustrative List of Export Subsidies) * * *" (emphasis added). While Congress incorporated the Illustrative List in the statute, it did not limit the definition of export subsidy to the practices outlined in the List. The legislative history of the TAA explains, "The reference to specific subsidies in the definition is not all inclusive, but rather is illustrative of practices which are subsidies within the meaning of the word as used in the bill. The administering authority may expand upon the list of specified subsidies consistent with the basic definition." S. Rep. 96–249, 96th Cong., 1st Sess. 85 (1979). *See, also, Trade Agreements Act of 1979: Statements of Administrative Action*, H.R. Doc. No. 96–153, Pt. II, 96th Cong., 1st sess. 432 (1979). The Illustrative List is not, therefore, controlling of the identification and measurement of export subsidies, but must be considered along with other provisions of the statute and its legislative history, administrative practice and judicial precedent.

We consider direct government provision of an input at a price lower to exporters than to producers of domestic products to confer a subsidy within the meaning of section 771(5) of the Tariff Act. It is irrelevant whether the PEP is consistent with item (d) or whether cotton yarn exporters could have imported raw cotton at world market prices. We are concerned with the alternative price commercially available in the domestic market.

An analogy to the PEP program is the case of export loans. In this case, as in many others, we have determined that export loans at preferential interest rates constitute a subsidy. In measuring the subsidy, we do not concern ourselves with whether firms could have borrowed money at commercial rates in international credit markets. The fact that, as a result of a government program, they borrowed from domestic sources at rates below those commercially available in the domestic market leads us to determine that a subsidy is bestowed.

To calculate the benefit from the PEP, we multiplied the amount of cotton purchased by each firm at the PEP price by the average internal market price between April and December 1985. The benefit is the difference between this amount and the amount paid for raw cotton under the PEP. We allocated the benefit over each firm's total exports for 1985. On this basis, we determine the benefit from this program to be 6.68 percent *ad valorem* for Cotonificio Guilherme Giorgi, 15.24 percent *ad valorem* for Kanebo and 7.79 percent for all other firms.

Since the PEP was eliminated in February 1986, we preliminarily determine that for purposes of cash deposits of estimated countervailing duties there is no current benefit from this program.

Comment 12: The Brazilian government argues that the Department incorrectly overstated the net subsidy by failing to include those companies with *de minimis* levels of benefits in calculating the weighted-average country-wide subsidy rate. Since countervailing duties are applied on all products of a country subject to a countervailing duty order, any country-wide average must, by definition, include all producers. While *de minimis* companies may still obtain a zero rate, the calculation of the weighted average must consider all producers. Furthermore, the Court of International Trade has directed the Department to include all companies under review in its calculations of average countervailing duty rates. *See, Fabricas El Carmen, S.A., de C.V., et al.* v. *United States*, Slip Op. 87–113 (CIT October 7, 1987).

Department's Position: The court vacated its initial decision in *Fabricas El Carmen*. Nevertheless, even the moot decision is irrelevant to this case. The court remanded the case because it was dissatisfied with the Department's having calculated a country-wide rate based on the responses of only 16 out of more than two thousand companies

subject to the countervailing duty order. *See, Final Affirmative Countervailing Duty Determination: Certain Textile Mill Products from Mexico* (50 FR 10824; March 18, 1985). The court stated:

> * * * ITA's approach of dividing those benefits by the exports of those same 16 firms is unreasonable in that it will not yield a national average rate for all 2,000 firms, but rather, it will only yield an average rate for those 16 firms.

Section 607 of the Tariff and Trade Act of 1984 establishes a statutory presumption in favor of country-wide countervailing duty rates, with the possibility of company-specific rates if the Department determines that a significant differential exists. The Department's policy is to use a single weighted-average country-wide rate unless there is a significant differential between an individual company rate and the weighted-average country-wide rate. According to the Department's regulations, 19 CFR 355.20(d)(3), we have interpreted a significant differential to be a difference of five percentage points or 25 percent from the weighted-average country-wide rate, whichever is greater. We also consider a *de minimis* rate for an individual company to be, by definition, "significantly different" from the weighted-average country-wide rate.

Contrary to the Brazilian government's assertion, we did include those companies with *de minimis* benefits in calculating the weighted-average country-wide rate. This country-wide rate served as the basis for comparison with individaul company rates to determine whether significant differentials existed. Having found significant differentials between the level of subsidies received by individual exporters of cotton yarn, we used a combination of company-specific rates and an "all other" rate for assessment and duty deposit purposes. An "all other" rate is different from a country-wide rate because, by definition, it cannot be based on all companies. We do not include the weights of companies with significantly different benefits in calculating the "all other" rate because to do so would misstate the benefit for the "all other" companies.

In any countervailing duty case involving companies that receive significantly different benefits, the designation "significantly different" and "country-wide" are mutually exclusive. Once any company receives a separate rate, the country-wide rate is no longer applicable when assessing countervailing duties. The duty assessed on the exports of the remaining "all other" companies must be different from the duty that would have been assessed had there been only a country-wide rate. This is so because the amount of the net subsidy on the merchandise exported to the United States remains constant regardless of whether we set a country-wide rate or a combination of company-specific rates and an "all other" rate. With a country-wide rate in this case, we would assess duties on the exports of a greater number of companies. With company-specific *de minimis* rates and an "all other" rate, we assess a greater rate of duty on the exports of fewer companies. In either case, the amount of countervailing duties collected by the Customs Service is the same.

Firms Receiving De Minimis Benefits

We determine that the following firms received *de minimis* benefits during the period May 18, 1984 to December 31, 1984:

(1) Brasital S.A. Para a Industria E.O. Comercio;
(2) Cia. Industrial e Agricola Boyes;
(3) Fiacao Amparo S.A;
(4) Lanficio Amparo Ltda; and
(5) Unitika do Brasil Industria Textil Ltda.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be *de minimis* for five firms, 12.15 percent *ad valorem* for Cotonificio Guilherme Giorgi, and 2.56 percent *ad valorem* for all other firms for the period May 18, 1984 through December 31, 1984. The Department determines the net subsidy to be 22.30 percent *ad valorem* for Kanebo, 7.75 percent *ad valorem* for Cotonificio Guilherme Giorgi, and 12.82 percent *ad valorem* for all other firms for the period January 1, 1985 through December 31, 1985.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of Brazilian carded cotton yarn from the five firms with *de minimis* benefits in 1984, and to assess countervailing duties of 12.15 percent of the f.o.b. invoice price on shipments of this merchandise from Cotonificio Guilherme Giorgi, and 2.56 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after May 18, 1984 and exported on or before December 31, 1984. The Department will also instruct the Customs Service to assess countervailing duties of 22.30 percent and 7.75 percent of the f.o.b. invoice price on shipments from Kanebo and cotonificio Guilherme Giorgi, respectively, and 12.82 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1985 and on or before December 31, 1985.

The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties on shipments of this merchandise from three companies: Fiacao Amparo, Novo Odessa and Cotonificio Guilherme Giorgi; and to collect a cash deposit of estimated countervailing duties of 2.38 percent of the f.o.b. invoice price on shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22

Dated: January 26, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-2380 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Request for modification to scientific research permit #670.

SUMMARY: Pursuant to the provisions of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), LGL Limited, Environmental Research Associates (P273E), 22 Fisher Street, P.O. Box 457, King City, Ontario, LOG 1KO, Canada, has requested a modification to Permit #670 to continue research activities during the spring seasons of 1990–1993. The research involves taking by harassment up to 800 bowhead whales (*Balaena mysticetus*) and 600 white whales (*Delphinapterus leucas*) per year for a period of three years in the Alaskan Beaufort Sea. The purpose of the project is to determine whether, and under what circumstances, bowhead and white whales migrating through lead systems in spring react to underwater noise from industrial activities associated with oil production.

Permit #670, issued May 1, 1989 (54 FR 18565) authorized the same type of take as stated above during the spring migrations in 1989. Before considering any modification to this Permit, the

National Marine Fisheries Service (NMFS) required additional environmental analyses and other documentation concerning possible cumulative impacts. Under the National Environmental Policy Act, an environmental assessment (EA) has been prepared. The Permit and the EA are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, NOAA Fisheries, 1335 East-West Highway, Room 7330, Silver Spring, Maryland 90210; and

Alaska Region, NOAA Fisheries, 709 West 9th Street, Federal Building, Juneau, Alaska 98802.

Dated: January 25, 1990.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 90-2289 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 26, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATES: January 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ann Novak, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and special shift.

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 4883, published on January 31, 1989; and 54 FR 7245, published on February 17, 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 implemention of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 25, 1989 and February 14, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1989 and extends through January 31, 1990.

Effective on January 26, 1990, the directives of January 25, 1989 and February 14, 1989 are amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilaterial textile agreement between the Governments of the United States and Bangladesh:

Category	Adjusted 12-month limit [1]
334	79,671 dozen.
338/339	790,453 dozen.
341	1,326,355 dozen of which not more that 620,727 dozen shall be in Category 341-Y.[2]
347/348	1,249,852 dozen.
635	183,421 dozen.
638/639	688,511 dozen.
641	442,900 dozen.
645/646	218,932 dozen.
647/648	897,307 dozen of which not more than 482,024 dozen shall be in Categories 647pt./648pt.[3]

[1] The limits have not been adjusted to account for any imports exported after January 31, 1989.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] Category 647pt.: only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6203.23.0060, 6203.29.2030, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.3030, 6210.40.1030, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648pt.: only 6104.23.0032, 6104.29.1030, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.69.2010, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050, 6117.90.0046, 6204.23.0040, 6204.29.2020, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.3030, 6204.69.9030, 6210.50.1030, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-2375 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import levels for the new agreement year.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 1, 1989, the Governments of the United States and the People's Republic of Bangladesh agreed to extend their current bilateral textile agreement for three consecutive one-year periods, beginning on February 1, 1990 and extending through January 31, 1993.

The bilateral textile agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended and extended, also establishes limits for the period February 1, 1990 through January 31, 1991.

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).

Dated: January 26, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 25, 1990

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended and extended, and a Memorandum of Understanding dated December 1, 1989 between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1990 and extends through January 31, 1991, in excess of the following restraint limits:

Category	Twelve-month restraint limit
331	661,610 dozen pairs
334	79,671 dozen
335	143,049 dozen
338/339	741,576 dozen
340/640	1,676,375 dozen of which not more than 620,259 dozen shall be in Categories 340-Y/640-Y [1]
341	1,388,725 dozen of which not more than 609,859 dozen shall be in Category 341-Y [2]
342/642	240,271 dozen
347/348	1,249,852 dozen
635	180,585 dozen
638/639	940,453 dozen
641	581,498 dozen
645/646	220,855 dozen
647/648	786,071 dozen of which not more than 510,945 dozen shall be in Categories 647-T/648-T [3]

[1] In Categories 340-Y/640-Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.

[2] In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] In Categories 647-T/648-T, only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6203.23.0060, 6203.29.2030, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.3030, 6210.40.1030, 6211.20.1525, 6211.20.3030 and 6211.33.0030 in Category 647-T; and 6104.23.0032, 6104.29.1030, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.69.2010, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050, 6117.90.0046, 6204.23.0040, 6204.29.2020, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.2530, 6204.69.3030, 6204.69.9030, 6210.50.1030, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060 in Category 648-T.

Imports charged to these category limits for the period February 1, 1989 through January 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 90-2236 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products from Haiti

January 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: February 1, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 15, 1989, the Governments of the United States and Haiti agreed to amend their current bilateral textile agreement to extend through December 31, 1993. A formal exchange of notes will follow.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels (GALs) for certain cotton and man-made fiber textile products for the period January 1, 1990 through December 31, 1990.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6053, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 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 MOU, but are designed to assist only in the implementation of certain of its provisions.

Dated: January 26, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 25, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 26 and 30, 1986, as amended and extended by the Memorandum of Understanding dated December 15, 1989, between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1990, entry into the United States for consumption or withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Haiti and exported during the twelve-month period beginning on January 1, 1990 and extending through December 31, 1990, in excess of the following designated levels:

Category	Twelve-month restraint level [1]
331	400,000 dozen pairs
340/640	400,000 dozen
341/641	384,000 dozen

Category	Twelve-month restraint level [1]
347/348	450,000 dozen
350	55,000 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

Imports charged to these category limits for the period January 1, 1989 through December 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton and man-made fiber textile products in the following categories which are assembled in Haiti from fabric formed and cut in the United States and exported to the United States from Haiti during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Category	Guaranteed access level
331	500,000 dozen pairs
340/640	440,000 dozen
341/641	400,000 dozen
347/348	800,000 dozen
350	120,000 dozen

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration (Form ITA-370P) in accordance with the provisions of the certification requirements established in the directive of February 19, 1987, as amended, shall be denied entry unless the Government of Haiti authorizes the entry and any charges to the appropriate designated consultation levels. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-2237 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

January 25, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 26, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryforward used.

A description of the textile and apparel categories in terms of HTS number 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 27664, published on June 30, 1989; and 54 FR 36368, published on September 1, 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.

Dated: January 26, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 25, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 23, 1989, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1989 and extends through June 30, 1990.

Effective on January 26, 1990, the directive of June 23, 1989 is being amended further to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
317/326/617	14,615,700 square meters
340	440,675 dozen
347/348	833,711 dozen
351/651	275,513 dozen
369-S [2]	486,220 kilograms
647	592,589 dozen
648	1,295,099 dozen
Sublevels in Group II:	
342/642	189,305 dozen
336/636	345,100 dozen
369-D [3]	436,632 kilograms
634	51,024 dozen

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] In Category 369-S, only HTS number 6307.10.2005.

[3] In Category 369-D, only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-2238 Filed 1-31-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office

of Management and Budget (OMB) a request to approve a new information collection requirement concerning Bankruptcy.

ADDRESSES: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 523–3847 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: .

a. *Purpose:* Under statute, contractors may enter into bankruptcy which may have a significant impact on the contractor's ability to perform its Government contract. The Government often does not receive adequate and timely notice of this event. If contract clause is established requiring contractors to notify the contracting officer within 5 days after the contractor enters into bankruptcy.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, *1,000;* responses per respondent, *1;* total annual responses, *1,000;* preparation hours per response, *1;* and total response burden hours, *1,000.*

c. *Annual recordkeeping burden:* The annual recordkeeping burden is estimated as follows: Recordkeepers, *1,000;* hours per recordkeeper, *.25;* and total recordkeeping burden hours, *250.*

Obtaining Copies of Proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS) Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0XXX, Bankruptcy.

Dated: January 23, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89–2344 Filed 1–31–89; 8:45 am]

BILLING CODE 6820–JC

DEPARTMENT OF DEFENSE

Office of the Secretary

Retirement Homes Advisory Board; Meeting

AGENCY: Assistant Secretary of Defense (Force Management and Personnel).

ACTION: Notice of Open Meeting of the DoD Retirement Homes Advisory Board.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Assistant Secretary of Defense (Force Management and Personnel) announces that the Retirement Homes Advisory Board (Charter date: December 27, 1989), will hold an open meeting at the Pentagon, Room 1E801.

DATE AND TIME: February 14, 1990, 0830–1600.

ADDRESSES: Pentagon, Washington, DC 20301.

PURPOSE: To conduct an in-progress-review of board member findings and discuss recommendations.

AGENDA: Doctor Gregory Pawlson will chair the in-progress review which will include discussions of the results of preliminary research as well as the formulation of follow on action plans.

FOR FURTHER INFORMATION CONTACT: LTC K. Deutsch at 202–697–7197.

Dated: January 26, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–2363 Filed 1–31–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Health Care Delivery; Catchment Area Management Demonstration Projects

AGENCY: Department of the Air Force, Defense.

ACTION: Notice of U.S. Air Force catchment area management demonstrations.

SUMMARY: The Assistant Secretary of Defense for Health Affairs had delegated authority to the Department of the Air Force to conduct Catchment Area Management (CAM) demonstrations at Bergstrom Air Force Base (AFB), Austin, TX and Luke/Williams AFBs, Phoenix, AZ beginning 1 March 1990. This project, under the provisions of chapter 55, title 10 U.S.C. 1092, will test the feasibility of giving the military medical treatment facility (MTF) Commander both the authority and responsibility for all health care delivery within his catchment area. By controlling both the Operations and Maintenance (O&M) and the projected Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) budgets, it is anticipated that the Commander can enhance both the quality and quantity of health care delivery within the catchment area while containing costs. Basic features of these CAM demonstration projects include maximizing efficient use of the MTF, negotiation of preferred rates with providers, and ensuring appropriate use of medical resources. An independent evaluation of this demonstration will be conducted by RAND Corporation, who will perform research, data collection, analysis, and reporting services to determine the degree to which health care services at the demonstration sites are being provided in a manner which meets the stated objectives of the demonstrations. These objectives are to: (1) Contain the rate of growth of government health care expenditures, (2) improve accessibility to health care services, (3) improve beneficiary and provider satisfaction with the availability and accessibility of health care services, and (4) maintain or enhance the quality of care provided to the CHAMPUS beneficiary population.

EFFECTIVE DATES: These demonstrations will be implemented 1 March 1990 and end no sooner than 1 March 1992.

FOR FURTHER INFORMATION CONTACT: Major Robert Valliere, Air Force Surgeon General's Office, Bolling AFB, DC 20332–6188, telephone (202) 767–5066.

SUPPLEMENTARY INFORMATION:

I. Background

Until recently, there was no mechanism to convert savings in CHAMPUS workload into increased resources in the MTF. In fiscal year 1988, the CHAMPUS appropriation was allocated to the individual Uniformed Services, making each Service responsible for the total expenditure for care provided to CHAMPUS beneficiaries. To evaluate the Services' assertion that they could effectively manage these funds and provide necessary medical care within the projected CHAMPUS budget, Congress directed in the fiscal year 1988 Defense Authorization Act that each of the Services conduct a demonstration of catchment area management in at least one site. During the demonstration, all CHAMPUS requirements apply except those that are specifically identified as changed for the purpose of the demonstration.

II. What the Demonstration Is Designed to Test

CAM is based on the pemise that the local MTF commander is responsible for all medical care provided to the eligible Department of Defense (DOD) beneficiary population within the catchment area (an area defined by a radius of approximately 40 miles of the MTF). To do this, the commander will be given responsibility to manage both the funds normally allocated to operate the MTF and the funds projected to be spent for health care from civilian sources through CHAMPUS. At the same time, the commander will be relieved of some regulatory restrictions that impede his ability to select the most cost-effective

options in delivering care to the beneficiary population. The demonstrations will test whether, by merging the CHAMPUS and MTF funding, the MTF commander can provide an enhanced level of services while maintaining quality and not exceeding the combined MTF and CHAMPUS expenditures currently predicted to be incurred in the absence of this demonstration. Health care finder (referral) and enrollment features are mandatory elements of the CAM demonstration.

III. Features Common to Both Demonstrations

The health care plans offered in the demonstration locations are titled MedExcel. These plans provide, at a minimum, the benefits covered under the current CHAMPUS program.

Beneficiary enrollment in the MedExcel program is strictly voluntary, and is designed to offer patients an alternative to the traditional CHAMPUS program. Patients who enroll will receive enhanced benefits and will be subject to MedExcel membership rules; patients who do not enroll may continue to use the standard CHAMPUS program. Likewise, providers may choose whether to participate in the MedExcel program by agreeing to offer services at discounted rates; however, the decision not to participate does not affect the provider's current status as either a CHAMPUS participating or nonparticipating provider.

Both demonstrations waive the requirement for a deductible amount, but the copayment requirements in the CHAMPUS regulation (32 CFR 191.4(f)), still apply (except for primary care office visits). The discounts available from the preferred providers will reduce the actual beneficiary cost share. All network providers must accept the agreed-upon discount off the CHAMPUS-determined allowable charge as payment in full (i.e., no charge to the patients for billed charges greater than the negotiated rate). Therefore, the beneficiary's responsibility will be limited to the copayment for most services (exception: no copayment for office visits to the patient's primary care provider).

The plan will be administered through a Member Services activity. Member Services will be responsible for enrollment, appointing and referral, benefits assistance, education and training, claims review for out-of-area and emergency care, grievances, and patient and provider relations.

The enrollment incentives for beneficiaries include preventive care benefits not authorized under the standard CHAMPUS program, such as annual physical examinations, pap smear, mammography, sigmoidoscopy or proctosigmoidoscopy, EKG, tonometry, and selected laboratory procedures. The standard CHAMPUS outpatient deductible will be waived for MedExcel enrollees. Enrollees will be assigned to either a military or civilian primary care provider (either a family medicine practitioner, pediatrician, or internist depending on the patient's needs); there will be no copayment for office visits made to this provider. Enrollees will also be encouraged to take regularly-scheduled MTF-sponsored classes to help individuals better manage their medical needs.

Enrollment is open to all CHAMPUS beneficiaries who reside, for at least nine months out of the calendar year, within the Bergstrom of Luke/Williams catchment areas. Patients can enroll at any time, and can voluntarily disenroll after one year. Patients can also be disenrolled due to relocation or for a grievance found to be justified by the MTF commander. Disenrolled members will not be allowed to reenroll until at least six months after the date of disenrollment. Once disenrolled from MedExcel, the beneficiary will revert to standard CHAMPUS coverage. Other restrictions, specified during the enrollment period, may apply.

As a part of the enrollment agreement, MedExcel enrollees will not be reimbursed by CHAMPUS for any medical care outside the MedExcel plan. Care provided by nonparticipating providers will be reimbursed only if preauthorization has been obtained or if care was obtained on an emergency basis.

Patients must seek all routine care through their assigned primary care provider. All specialty care will require a referral by this provider. Member Services will assist in setting up referral appointments that cannot be handled within the network.

Claims processing for both demonstration sites will be performed by the fiscal intermediary (FI) for the CHAMPUS Western region. Claims will be submitted directly to the FI by the provider of care. All network providers must accept the discount from the CHAMPUS-determined allowable charges as payment in full. Beneficiaries will not be required to submit any paperwork (except for out-of-area and emergency room/urgent care center claims, where the patient will be required to bring such bills to the Member Services Office for review and certification prior to submitting claims to the FI).

The Air Force program incorporates a strong utilization management function. All nonemergency inpatient care outside the MTF, along with selected outpatient procedures, will be subject to preauthorization regarding medical necessity and appropriateness. Authorization for emergency admissions must be sought within two duty days following admission. Selected inpatient care may also be subject to concurrent review to prevent unnecessarily extended hospitalization. Unauthorized services received by an enrollee may be subject to exclusion from payment under the MedExcel plan. Additionally, a case management program will be established to manage catastrophic or chronic complicated cases to assure such patients receive required services in a timely, cost-effective manner.

The CHAMPUS Mental Health Review contract is being modified to include utilization management requirements for mental health cases at the Air Force demonstration locations. A modification to another CHAMPUS contract will include additional utilization management requirements for medical/surgical cases. These modifications are designed to assure all patients receive the most appropriate type and level of care.

IV. Key Features of Each Site

Both the Bergstrom and Luke/Williams demonstrations are focused on maximizing the use of MTF resources, managing enrollees within a preferred provider network, and ensuring efficient allocation of resources.

The Bergstrom Air Force Base (AFB) demonstration will establish an alternative health plan to the current CHAMPUS system. The plan will maximize the use of the existing MTF by expanding the current Internal Partnership Program, which allows waiver of CHAMPUS cost share and deductible. The Partnership expansion will be predominately for primary care services (e.g., Family Practice, Pediatrics, and Internal Medicine) as well as surgical specialties that can be brought into the MTF without major facility modifications.

The Bergstrom MTF will then expand the services to the beneficiary population by establishing a network of civilian doctors to complement the MTF's capabilities. The civilian network will specifically include those specialties that are currently high cost to the CHAMPUS program in the Bergstrom AFB catchment area. These include Psychiatry, Obstetrics, Surgical specialties, and Internal Medicine subspecialties. The network will include

physicians and institutions. Agreements negotiated with all the providers will include discounted rates.

At the Luke/Williams site, resources will be maximized through the use of Partnership agreements to increase the availability of selected services and to extend operating hours in the outpatient clinic areas. Additional space has been added at Williams AFB to house administrative, clinical, and pharmaceutical functions. Luke AFB plans to expand their on-site mental health services.

Preferred provider agreements will be negotiated to augment MTF capabilities at both Luke and Williams. Enrollees will be managed within and between sites by the Member Services Office at both MTFs.

V. CAM Program Savings

The United States Air Force anticipates that the CAM Demonstration will provide an enhanced level of services at discounted rates while containing expenditures in the combined CHAMPUS and MTF budgets. Savings are dependent on the percentage of beneficiaries who enroll in the plans, the number of preferred providers who agree to participate, and the demonstration's ability to ensure appropriate utilization of medical resources. It is anticipated that savings will also result from nonparticipating providers' reduction of fees to remain competitive with the participating provider.

VI. Duration

The legislative authority for the CAM demonstration (10 U.S.C. 1092) was effective on October 1, 1987. The USAF CAM demonstration will begin on 1 March 1990, and will continue for at least two years from the date services are initiated at each demonstration site.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90-2273 Filed 1-31-90; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Programmatic Environmental Impact Statement (DEIS/EIR) for the Sacramento River Flood Control System Evaluation, California

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is an investigation of restoring the design level of flood protection for the Sacramento River Flood Control Project (SRFCP) levees. The purpose of the action is to investigate the integrity of the existing SRFCP levees, evaluate the level of protection afforded by the SRFCP levees, to determine whether the levees are functioning as designed, and to recommend reconstruction if needed. The study of the SRFCP levees has been divided into five phases. The first phase concentrated on the Sacramento River levees surrounding the Sacramento Urban area, and the second phase consists of the Feather River levees protecting the Marysville/Yuba City area. The third phase will look at the Sacramento River levees between the Sacramento Urban area and the Marysville/Yuba City area. The fourth phase consists of the project levees in the Sacramento/San Joaquin Delta, and the fifth phase consists of the Sacramento River levees north of the Marysville/Yuba City area. In May 1988 an Initial Appraisal Report was prepared for the first phase of the investigation. An Environmental Assessment/Initial Study and Finding of No Significant Impact/Negative Declaration were prepared to accompany the Basis of Design for Phase I. The programmatic EIS/EIR will cover the remaining phases of the investigation. Prior to construction of each phase site specific documentation will be prepared.

SCOPING AND FURTHER INFORMATION CONTACT: Suggestions on the scope of coverage for environmental impact evaluations and related information should be provided in writing to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814-4794. Questions may be addressed to Mr. Mike Welsh, at telephone (916) 551-1861. Responses specifically related to California Environmental Quality Act requirements of the EIR may be directed to Ms. Analena Bronsen, The Reclamation Board, Department of Water Resources, P.O. Box 942836, Sacramento, California 94236-0001, (916) 322-3740.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The study will investigate the integrity of the existing project levees and determine whether or not the levees are functioning as designed. If reconstruction is needed the study will determine if there is a Federal interest in proceeding with the project construction. The Corps of Engineers will prepare a report on its findings to be submitted to Congress.

2. Alternatives

Alternatives being considered are those that restore the design level of flood protection of the authorized Sacramento River Flood Control Project. These alternatives include: (a) no action, (b) levee embankment modifications, and (c) drainage facilities in or adjacent to the levee.

3. Scoping Process

a. Close coordination will be maintained with Federal, State, and local agencies, environmental organizations, concerned citizens, and other interested groups. A scoping notice to identify issues of concern will be circulated to the public in January 1990. Through this Notice of Intent, all segments of the affected public and agencies are invited to participate.

b. The following have tentatively been identified as significant issues that will be discussed in depth in the DEIS/EIR: impacts to fish and wildlife resources; impacts to riparian, wetland, and upland vegetation; cultural resources; endangered species; land use changes, socio-economics, esthetic impacts and cumulative impacts.

c. The Reclamation Board of the State of California is the potential local sponsor for the levee reconstruction. They will participate with the Corps of Engineers in the environmental impact studies.

d. Significant review and consultation requirements to be conducted during the preparation of the DEIS/EIR include coordination with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the State Historic Preservation Officer and Advisory Council on Historic Preservation under the National Historic Preservation Act, and coordination with the California Water Quality Control Board and Environmental Protection Agency on water quality issues under the Clean Water Act.

4. Availability

The DEIS/EIR is scheduled to be available for public review and comment in April 1990.

Dated: January 11, 1990.

Jack A. LeCuyer,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90-2285 Filed 1-31-90; 8:45 am]

BILLING CODE 3710-GH-M

Department of the Navy

Chief of Naval Operations; Closed Meeting

Pursuant to the provisons of the Federal Advisory Committee Act (5 U.S.C. app.2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Space and Electronic Combat Standing Task Force will meet February 27–28 1990 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of Space and Electronic Combat systems that can survive the Soviet challenge, and provide the minimal capabilities necessary to prevail in extended combat environments. The entire agenda of the meeting will consist of discussions of key issues regarding space exploration in support of U.S. national security, and related intelligence. These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552B(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, room 601, Alexandria, Virginia 22303–0268, Phone (703) 756–1205.

Dated: January 29, 1990.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 90–2370 Filed 1–31–90; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Notice is hereby given that the **Federal Register** notice for a proposed subsequent arrangement, **Federal Register**/Vol. 55, No. 17, Thursday, January 25, 1990, (55 FR 2546) designated as RTD/EU(SD)–73 is cancelled.

The **Federal Register** notice was inadvertently published due to an administrative error.

Dated: January 29, 1990.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–2353 Filed 1–31–90; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Switzerland to United Kingdom (British Nuclear Fuels, plc.) for the purpose of reprocessing, 105 irradiated fuel assemblies, containing approximately 32,815 kilograms of uranium, enriched to approximately 0.99% in U–235 and 318 kilograms of plutonium, from the Beznau nuclear power station. This subsequent arrangement is designated as RTD/EU(SD)–72. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in the United Kingdom, and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131(b)(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: January 29, 1990.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–2354 Filed 1–31–90; 8:45 am]

BILLING CODE 6450-01-M

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements; Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers: RTD/EU(NO)–41, for the transfer of an irradiated test fuel assembly containing 8,015 grams of uranium, enriched to 0.52 percent in the isotope uranium-235 and 52.9 grams of plutonium from Norway to Denmark for final storage.

RTD/EU(NO)–42, for the transfer of an irradiated test fuel assembly containing 9,630 grams of uranium, enriched to 0.78 percent in the isotope uranium-235 and 68.1 grams of plutonium from Norway to Denmark for final storage.

RTD/EU(NO)–43, for the transfer of an irradiated test fuel assembly containing 8,226 grams of uranium, enriched to 0.65 percent in the isotope uranium-235 and 51.6 grams of plutonium from Norway to Denmark for final storage.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days

after the date of publication of this notice.

For the Department of Energy.

Dated: January 29, 1990.

Thad Grundy, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-2356 Filed 1-31-90; 8:45 am]

BILLING CODE 6450-01-M

Announcement of Additional Scoping Meeting for the Environmental Impact Statement on Proposed Construction and Operation of a Special Nuclear Materials Research and Development Laboratory at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: Department of Energy (DOE).

ACTION: Announcement of Additional Environmental Impact Statement (EIS) Scoping Meeting.

SUMMARY: DOE announces an additional EIS scoping meeting, to be held in Espanola, New Mexico, for the proposed construction and operation of a Special Nuclear Materials Research and Development Laboratory (SNML) at the Los Alamos National Laboratory in Los Alamos, New Mexico.

Background

A Notice of Intent (NOI) to prepare an EIS on the SNML project was announced on January 12, 1990 (**Federal Register**, Vol. 55, No. 9, pages 1251–1253). Comments were requested with the comment period closing March 1, 1990, and a scoping meeting was announced to be held in Los Alamos, New Mexico, on January 31, 1990. The purpose of this Notice is to announce an additional scoping meeting at Espanola, New Mexico.

ADDRESSES: Written comments or suggestions on the scope of the EIS, requests to speak at the public scoping meeting, questions concerning the project, and requests for copies of the draft EIS should be directed to: Mr. Donald Lucero, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115, (505) 665–2170.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process, please contact: Carol M. Borgstrom, Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600.

DATES: Written comments and suggestions on the proposed scope of the EIS should be postmarked by March 1, 1990, to assure consideration in the preparation of the EIS. Comments postmarked after that date will be considered to the extent practicable. An additional public scoping meeting will be held in Espanola, New Mexico, on Feburary 13, 1990.

Scoping meeting: The meeting will be held at 7:00 p.m. on February 13, 1990, in the Northern New Mexico Community College Auditorium, Chama Highway, Espanola, New Mexico.

Individuals desiring to comment orally at this meeting should notify Mr. Lucero at the address above as soon as possible so that the Department can arrange a schedule of presentations. Persons who have not submitted a request to speak in advance may register to do so at the meeting. The meeting will not be conducted as an evidentiary hearing and there will be no questioning of speakers. In order to assure that everyone who wishes to present oral comments has the opportunity to do so, five minutes will be allotted to each speaker. Comments received at the meeting will be considered in the preparation of the Draft EIS. Speakers who wish to provide further information for the record should submit it to Mr. Lucero at the address above, postmarked by March 1, 1990. Oral and written comments will be given equal consideration. DOE will prepare transcripts of the scoping meeting and make them available to the public. The transcripts will be available for examination at the Reading Rooms and libraries identified in the previous Notice.

Dated in Washington, DC, this 30th day of January 1990.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 90-2448 Filed 1-31-90; 8:45 am]

BILLING CODE 6450-01-M

Office of New Production Reactors

Availability of Implementation Plan for Environmental Impact Statement of New Production Reactor Capacity

AGENCY: Office of New Production Reactors, Department of Energy.

ACTION: Notice of availability of environmental impact statement implementation plan.

SUMMARY: Notice is hereby given that an Implementation Plan for the New Production Reactor Capacity Environmental Impact Statement (EIS) is publicly available. The Department of Energy (DOE) is preparing the EIS for the proposed siting, construction, and operation of new production reactor capacity needed to ensure a reliable supply of nuclear materials, primarily tritium, for national defense needs. The EIS Implementation Plan describes the approach the Department intends to follow in preparing the EIS. It includes a brief description of the proposed action; a brief description of the scoping process and the public comments that were received; a discussion of the issues that will be included in the EIS; and a detailed outline and schedule for preparation of the EIS. The Implementation Plan is not a requirement of the National Environmental Policy Act of 1969; it is a Departmental tool used to guide preparation of the EIS and may be revised, as necessary. The draft EIS is expected to be issued for public comment in January 1991.

ADDRESSES: Copies of the EIS Implementation Plan are available for public inspection at the following locations:

Twin Falls Public Library, 434 Second Street East, Twin Falls, Idaho 83301–6397
Idaho Falls Public Library, 457 Broadway, Idaho Falls, Idaho 83402
Boise Public Library, Adult Services, 715 So. Capitol Boulevard, Boise, Idaho 83702–0610
Pocatello Public Library, 812 East Clark Street, Pacatello, Idaho 83201–5722
University of Idaho Library, Document Section, Moscow, Idaho 83843
INEL Technical Library, Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, Idaho 83415
CEL Regional Library, 2002 Bull Street, Savannah, Georgia 31499–4301
Aiken County Public Library, 435 Newberry Street SW, Aiken, South Carolina 29801
August-Richmond County Public Library, 902 Greene Street, Augusta, Georgia 30901
DOE Documents Collection, Gregg-Graniteville Library, University of South Carolina-Aiken, 171 University Parkway, Aiken, South Carolina 29801
Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201
U.S. Department of Energy, Reading Room, 825 Jadwin Avenue, Richland, Washington 99352
Richland Public Library, 944 Northgate, Richland, Washington 99352
Spokane Public Library, Comstock Building Library, W. 906 Main Avenue, Spokane, Washington 99201
Portland State University Library, 924 SW Harrison, Portland, Oregon 97207
Seattle Public Library, 1000 4th Avenue, Seattle, Washington 98104
U.S. Department of Energy, FOI Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585

FOR FURTHER INFORMATION CONTACT: Henry K. Garson, Director, Office of Environment, NP–50, Office of New

Production Reactors, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7413.

SUPPLEMENTARY INFORMATION: DOE proposes to build new production reactor capacity to make the isotope tritium and, as a secondary purpose, to provide the capability of producing weapons-grade plutonium. Under the Atomic Energy Act of 1954, DOE has the responsibility to produce all nuclear materials for the Nation's defense, as set forth by the Department of Defense in the annual Nuclear Weapons Stockpile Memorandum, approved by the President. Existing facilities are experiencing aging effects, which may affect their long-term availability.

The proposed action is the siting, construction, and operation of one or more new production reactors and associated facilities at one or more government-owned sites. The major reactor technologies to be evaluated include the light-water reactor (LWR) (including the conversion of the Washington Public Power Supply System's unfinished Nuclear Power Project Number 1 (WNP–1)), the modular high-temperature gas-cooled reactor (MHTGR), and the low-temperature heavy-water reactor (HWR). The proposed DOE sites for the reactors include the Hanford Site near Richland, Washington; the Idaho Site National Engineering Laboratory (INEL) near Idaho Falls, Idaho; and the Savannah River Site (SRS) near Aiken, South Carolina. The DOE has indicated that its preferred alternative for implementing the proposed action is constructing and operating an HWR and support facilities at SRS and constructing and operating an MHTGR and support facilities at INEL. Alternatives to be considered in the EIS include the nine possible combinations of reactor technologies (HWR, LWR, MHTGR) and sites (Hanford, INEL, SRS) as well as the "no action" alternative.

In accordance with the National Environmental Policy Act of 1969, DOE is preparing an Environmental Impact Statement. During the fall of 1988, an open comment period, including public meetings, was completed to determine the scope of the EIS. The Implementation Plan describes DOE's evaluation of the comments received during the scoping process.

Dated: January 25, 1990.

Dominic J. Monetta,

Director, Office of New Production Reactors.

[FR Doc. 90–2157 Filed 1–31–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–70–NG]

Westar Marketing Co. Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Department of Energy Office of Fossile Energy.

ACTION: Notice of an order granting a blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Westar Marketing Company (Westar) blanket authorization to import up to a total of 10 Bcf of Canadian natural gas for a two-year term beginning on the date of first delivery.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC January 24, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–2352 Filed 1–31–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER90–164–000, et al.]

TECO Power Service Corp., et. al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 24, 1990.

Take notice that the following filings have been made with the Commission:

1. TECO Power Services Corporation

[Docket No. ER90–164–000]

Take notice that TECO Power Services Corporation (Power Services) and Tampa Electric Company (Tampa Electric), on January 18, 1990, tendered for filing three initial rate schedules. The initial rate schedules are (a) an "Agreement for Sale and Purchase of Capacity and Energy between TECO Power Services Corporation and Seminole Electric Cooperative, Inc." relating to the sale to Seminole Electric Cooperative, Inc. (Seminole) of capacity of and associated energy from (i) combined cycle and combustion turbine facilities to be constructed by Power Services in Hardee County, Florida and (ii) Tampa Electric's Big Bend 4 facility; (b) an "Agreement for Sale and Purchase of Capacity and Energy from the Hardee Power Station between TECO Power Services Corporation and Tampa Electric Company: relating to the sale to Tampa Electric of capacity of an associated energy from the same combined cycle and combustion turbine facilities; and (c) an "Agreement for Sale and Purchase of Capacity and Energy from Big Bend Station Unit No. Four between TECO Power Services Corporation and Tampa Electric Company' relating to the sale to Power Services of capacity of and associated energy from Tampa Electric's Big Bend 4 facility.

Power Services and Tampa Electric have requested a waiver of the notice requirements to permit filing of these rate schedules more than 120 days prior to their effective dates. TECO Power Services Corporation is also seeking waivers of certain other rate and non-rate regulations. A copy of the filing has been served upon the Florida Public Service Commission and Seminole Electric Cooperative, Inc.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Electric Company

[Docket No. ER90–163–000]

Take notice that on Januaary 17, 1990 Commonwealth Electric Company (Commonwealth) filed, pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1989, thereby superseding the 23KV Wheeling Rate in effect during calendar 1988. Commonwealth has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1989.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Light Company

[Docket No. ES90-23-000]

Take notice that on January 17, 1990, Central Illinois Light Company (Applicant) filed an application seeking authority pursuant to section 204(a) of the Federal Power Act to issue from time to time short-term debt obligations in the aggregate principal amount not exceeding $66 million outstanding at any time with final maturities of not later than December 31, 1992.

Comment date: February 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Central Montana Electric Power Cooperative, Inc., v. Montana Power Company

[Docket No. EL90-10-000]

Take notice that on January 9, 1990, Central Montana Electric Power Cooperative, Inc., (Central Montana) pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824e and 825e (1985), as amended by the Regulatory Fairness Act (RFA), Public Law 100-473, section 2, 102 Stat. 2299 (Oct. 6, 1988), tendered for filing a complaint against Montana Power Company (Montana Power). Central Montana states that Montana Power has charged and is charging Central Montana wholesale rates that are unjust and unreasonable and therefore unlawful under the FPA.

Central Montana requests that the Commission (1) issue an order initiating an evidentiary proceeding under section 206 of the FPA, as amended by the RFA, investigating the justness and reasonableness of the rates for power and energy charged by Montana Power to Central Montana; (2) order a rate reduction and establish just and reasonable rates for the sale of power and energy by Montana Power to Central Montana; (3) order refunds, with interest, of overpayments for power and energy made by Central Montana to Montana Power during the refund period; (4) establish a refund effective date in this proceeding sixty days from the filing of this Complaint as permitted under the FPA, as amended by the RFA; and (5) grant such other relief as it may deem just and appropriate.

Comment date: February 23, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Philadelphia Electric Company

[Docket No. ER90-167-000]

Take notice that on January 19, 1990, Philadelphia Electric Company (PE) with the concurrence of Baltimore Gas and Electric Company (BG&E) tendered for filing as an initial rate under section 205 of the Federal Power Act and part 35 of the regulations issued thereunder, an agreement between PE and BG&E dated January 5, 1990.

PE states that the Agreement sets forth the terms and conditions for the sale of energy, installed capacity and import capability by PE to BG&E. The commercial operation of Unit 2 at PE's Limerick Generating Station on January 8, 1990 enabled PE to make such sales which will be economically advantageous to BG&E doe to the extended unplanned outage of two of its major base load generation units. The rates for PE services are negotiated such that the cost to BG&E will always be less than its avoided cost. The major portion of transactions under this Agreement will take place prior to June 1, 1990. In order to optimize the economic advantages to both PE and BG&E, PE requests that the Commission waive its customary notice period and allow this Agreement to become effective on January 8, 1990.

PE states that a copy of this filing has been sent to BG&E and will be furnished to the Pennsylvania Public Utility Commission and the Maryland Public Service Commission.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Paul H. Henson

[Docket No. ID-2433-000]

Take notice that on January 18, 1990, Paul H. Henson, (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, UtiliCorp United Inc., Public Utility

Director, Duke Power Company, Public Utility

Comment date: February 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. The Washington Water Power Company

[Docket No. ER90-161-000]

Take notice that on January 17, 1990, the Washington Water Power Company (WWP) tendered for filing a Notice of Cancellation for Supplement No. 1 to Rate Schedule FPC No. 56.

WWP requests an effective date of December 22, 1989.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Utah Power & Light Company

[Docket Nos. ER84-571-008 and ER85-486-003, and ER86-300-003]

Take notice that on January 16, 1990, Utah Power & Light Company (Utah) tendered for filing its revised compliance filing in accordance with the Commission's Order issued December 20, 1989.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER90-98-000]

Take notice that on January 22, 1990, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to a Letter of Commitment providing for the sale by Tampa Electric Company to the Orlando Utilities Commission (Orlando) of electric energy from Tampa Electric's coal-fired generating resources. The Letter of Commitment was initially tendered for filing on December 8, 1989. The amendment modifies the provisons of the Letter of Commitment concerning the energy charge and its adjustment.

Copies of the amendatory filing have been served on Orlando and the Florida Public Service Commission.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corp.

[Docket Nos. ER90-26-001 and ER89-470-002]

Take notice that in accordance with ordering paragraph F of the Commission's Order Accepting For Filing and Suspending Rates, Denying Motion To Reject, Ordering Summary Disposition, Noting and Granting Interventions, Denying Request For Technical Conference, Establishing Hearing Procedures, And Consolidating Dockets, issued December 20, 1989 in Docket Nos. ER90-26-000 and ER89-470-000, American Electric Power Service Corporation (AEPSC) on behalf of Appalachian Power Company (APCO) and Indiana Michigan Power Company (I&M), tendered for filing on January 19, 1990, a Compliance Filing.

The purpose of the Compliance Filing is to revise the charges for Unit Power service to Carolina Power & Light Company (CP&L) under the Transmission and Unit Power Supply Agreement among I&M, APCO, and CP&L, dated December 14, 1988, as directed by the Commission in its December 20, 1989 Order.

Copies of the filing were served upon the regulatory commissions for the

states of Indiana, Kentucky, Michigan, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, and all parties.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2242 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL89-48-000, et al.]

Wisconsin Power and Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 25, 1990.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Power and Light Company

[Docket No. EL89-48-000]

Take notice that on January 9, 1990, Wisconsin Power and Light Company submitted further information in connection with its petition for declaratory order filed by letter of August 21, 1989. The filing company states that a search of certain of its company files has revealed new information concerning the coal contract that was the subject of the original filing.

Comment date: February 7, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Robert G. Schwartz

[Docket No. ID-2432-000]

Take notice that on January 18, 1990, Robert G. Schwartz (Applicant) filed under section 305(b) of the Federal Power Act to hold the following positions:

Trustee, Consolidated Edison Company of New York, Inc.

Director, CS First Boston, Inc.

Comment date: February 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Oklahoma Gas and Electric Company

[Docket No. EC90-11-000]

Take notice that on January 22, 1990, Oklahoma Gas and Electric Company (Applicant) tendered for filing an application pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Regulations thereunder, for authorization to purchase certain electric transmission facilities from the Southwestern Electric Power Company, a Delaware Corporation.

The Company states it is engaged primarily in the generation, transmission, distribution and sale of electric energy in Oklahoma and western Arkansas. The facilities being purchased will be incorporated into the Company's transmission system.

Comment date: February 13, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Company

[Docket No. ER89-652-000]

Take notice that on December 29, 1989, Wisconsin Power and Light Company (WP&L) supplemented its original filing in Docket No. ER89-652 in response to a Commission deficiency letter dated November 1, 1989.

Comment date: February 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER90-165-000]

Take notice that on January 19, 1990, Pacific Gas and Electric Company (PG&E) tendered a Notice of Cancellation of the Arvin-Edison Water Storage District Letter Agreements on file in FERC Rate Schedule No. 79.

PG&E requests an effective date of March 20, 1990.

Comment date: February 9, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2243 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3013-005, et al.]

Hydroelectric Applications (Natick Hydroelectric Assoc. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Transfer of Lincense.

b. *Project No.:* 3013-005.

c. *Date filed:* Octobet 20, 1989.

d. *Applicant:* Natick Hydroelectric Associates (licensee) L2W, Inc. (transferee).

e. *Name of Project:* Natick Hydroelectric Project.

f. *Location:* On the Pawtuxet River in Kent County, Rhode Island.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. George K. Lagassa, Mainstream Associates, 110 Lafayette Road, Box 947, North Hampton, NH 03862.

i. *FERC Contact:* Michael Dees (202) 357-0807.

j. *Comment Date:* February 6, 1990.

k. *Description of Transfer:* On October 20, 1989, Natick Hydroelectric Associates and L2W, Inc. filed a joint application for transfer of the license for the Natick Hydroelectric Project No. 3013 from Natick Hydroelectric Associates to L2W, Inc. The proposed transfer will not result in any change in the project. The transferee states that it would comply with all the terms and conditions of the license. The purpose of the transfer is to allow the sale of the project.

l. This notice also consists of the following standard paragraphs: B and C.

2a. *Type of Filing:* Transfer of License.

b. *Project No.:* 4586-010.

c. *Date filed:* November 30, 1989.

d. *Applicant:* Dennis V. McGrew, Kenneth R. Kock, and Thomas M. McMaster (transferors), and the City of Tacoma (transferee).

e. *Name of Project:* Swamp Creek.
f. *Location:* On Swamp Creek in Whatcom County, Washington.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:*
Garth R. Jackson, Tacoma Public Utilities, Resource Development, P.O. Box 11007, Tacoma, WA 98411, (206) 383–2471.
Dennis V. McGrew, McGrew & Associates, 3032 West Alpine Drive, Bellingham, WA 98226, (206) 676–0198.
i. *Commission Contact:* William Roy-Harrison, (202) 357–0845.
j. *Comment Date:* March 1, 1990.
k. *Description of Proposed Action:* The transferors propose to transfer the license issued on June 30, 1986, to the transferee. The transferee is a municipality organized under the laws of the state of Washington.
l. This notice also consists of the following standard paragraphs: B and C.
3a. *Type of Filing:* Transfer of License.
b. *Project No.:* 4587–024.
c. *Date Filed:* November 30, 1989.
d. *Applicant:* Dennis V. McGrew, Kenneth R. Kock, and Thomas M. McMaster (transferors), and the City of Tacoma (transferee).
e. *Name of Project:* Ruth Creek.
f. *Location:* On Ruth Creek in Whatcom County, Washington.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).
h. *Applicant Contract:*
Garth R. Jackson, Tacoma Public Utilities, Resource Development, P.O. Box 11007, Tacoma, WA 98411, (206) 383–2471.
Dennis V. McGrew, McGrew & Associates, 3032 West Alpine Drive, Bellingham, WA 98226, (206) 676–0198.
i. *Commission Contact:* William Roy-Harrison, (202) 357–0845.
j. *Comment Date:* March 1, 1990.
k. *Description of Proposed Action:* The transferors propose to transfer the license issued on July 11, 1986, to the transferee. The transferee is a municipality organized under the laws of the state of Washington.
l. This notice also consists of the following standard paragraphs: B and C
4a. *Type of Application:* Amendment of License.
b. *Project No.:* 7153–010.
c. *Date Filed:* November 28, 1989.
d. *Applicant:* Consolidated Hydro New York, Inc.
e. *Name of Project:* Victory Mills.
f. *Location:* Village of Victory Mills, Saratoga County, New York.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Michael J. Alessi, Sr., Vice President, Operation, Consolidated Hydro New York, Inc., c/o Consolidated Hydro, Inc., RR #2 Box 69OH, Sanford, ME 04073, (207) 490–1980.
i. *FERC Contact:* Robert A. Crowley, (202) 357–0664.
j. *Comment Date:* March 14, 1990.
k. *Description of Project:* The licensee requests permission to increase the installed capacity of the project from 1,237 kW, as authorized in paragraph (B)(2) of the license issued March 27, 1986, to 1656 kW.
l. This notice also consists of the following standard paragraphs: B, C, and D2.
5a. *Type of Application:* Minor License.
b. *Project No.:* 10806–000
c. *Date Filed:* June 15, 1989.
d. *Applicant:* Holyoke Economic Development and Industrial Corporation.
e. *Name of Project:* Station No. 5.
f. *Location:* On the second level canal on the west bank of the Connecticut River, Hampden County, Massachusetts.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contract:* Mr. Robert Bateman, City Hall, Rm. 10, Holyoke Ave., Holyoke, MA 01040, (413) 534–2200.
i. *FERC Contact:* Michael Dees (202) 357–0807.
j. *Comment Date:* March 28, 1990.
k. *Description of Project:* The proposed project would consist of: (1) A gated intake with new trashracks located on the Second Level Canal of the Holyoke Water Power Company; (2) two 75-foot-long, 6.5-foot-diameter, steel penstocks; (3) a refurbished single-runner, vertical Kaplan turbine directly coupled to a rewound 790-kW generator; (4) a 375-foot-long, 16.5-foot-wide by 11-foot high arched brick-lined tailrace tunnel; (5) a steel gate where the tailwater empties into the Connecticut River; (6) in interconnection with the Holyoke Gas and Electric Department's underground service line, and (7) appurtenant facilities.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
6a. *Type of Filing:* Conduit Exemption.
b. *Project No.:* 10833–000.
c. *Date Filed:* October 12, 1989.
d. *Applicant:* Alameda County Water Direct.
e. *Name of Project:* WTP No. 2 Supply Line/Head Breaking Facility.
f. *Location:* Reach 8 of the South Bay Aqueduct in Alameda County, California.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:* James D. Beard, General Manager, Alameda County Water District, P.O. Box 5110, 43885 South Grimmer Boulevard, Fremont, CA 94537, (415) 659–1970.
i. *Commission Contact:* Nanzo T. Coley, (202) 357–0840.
j. *Comment Date:* February 16, 1990.
k. *Description of Project:* The proposed project would be connected to the turnout structure of the existing state of California South Bay Aqueduct and would consist of: (1) A proposed 24-inch-diameter penstock that would supply water to all the turbines; (2) a proposed powerhouse containing four generating units rate at 225 kW each and two generating units rated at 115 kW each; (3) a proposed tailrace from which the water would flow to the treatment plant; and (4) appurtenant facilities. The applicant estimates the average annual energy output at 6,740,000 kWh.
l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.
7a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10842–000.
c. *Date Filed:* November 9, 1989.
d. *Applicant:* Clarksville Hydro Associates.
e. *Name of Project:* Clarksville Hydroelectric Project.
f. *Location:* On the Mississippi River, Near Clarkville, in Pike County, Missouri.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).
h. *Applicant Contact:* Mr. Dominique Darne, Might Development Corporation, 900 19th Street, NW, Suite 600, Washington, DC 20006, (202) 457–6610.
i. *FERC Contact:* Mary Golato (202) 357–0804.
j. *Comment Date:* February 27, 1990.
k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' dam and would consist of: (1) A proposed powerhouse containing four generating units having a total installed capacity of 50 megawatts; (2) an existing transmission line 2,000 feet long; and (3) appurtenant facilities. The applicant estimates that the cost of the studies would be approximately $250,000. The applicant estimates that the average annual generation is 245,000,000 kilowatthours.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
8a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10843–000.
c. *Date Filed: November 13, 1989.*
d. *Applicant:* Rock River Power and Light Corporation.

e. *Name of Project:* Brodhead Dam.

f. *Location:* On the Sugar River in Brodhead, Green County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Thomas J. Reiss, Jr., President, Rock River Power and Light Corporation, P.O. Box 553, 319 Hart Street, Watertown, WI 53094, (414) 261–7975.

i. *FERC Contact:* Mary Golato (202) 357–0804.

j. *Comment Date:* March 20, 1990.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) An existing reinforced concrete dam 6 feet high and 222 feet long; (2) an existing reservoir with a surface area of 127.7 acres and a total storage capacity of 316.9 acre-feet at a crest elevation of 784 feet mean sea level; (3) a proposed powerhouse containing two units having a total installed capacity of 300 kilowatts; and (4) appurtenant facilities. The existing dam is owned by the City of Brodhead, Wisconsin. The applicant estimates that the cost of the studies is $30,000. The applicant estimates that the average annual generation would be 1,008,000 kilowatthours.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10848–000.

c. *Date filed:* November 14, 1989.

d. *Applicant:* Winfield Hydro Associates.

e. *Name of Project:* Winfield Hydroelectric Project.

f. *Location:* On the Mississippi River, in Winfield, Lincoln County, Missouri.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dominique Darne, Might Development Corporation, 900 19th Street, NW, Suite 600, Washington, DC 20006, (202) 457–6616.

i. *FERC Contact:* Mary C. Golato (202) 357–0804.

j. *Comment Date:* March 20, 1990.

k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' dam and would consist of the following: (1) A proposed powerhouse containing four turbine-generating units at a total installed capacity of 50 megawatts; (2) an existing transmission line approximately 2,000 feet long; and (3) appurtenant facilities. The applicant estimates that the cost of the studies would be approximately $250,000. The applicant estimates that the average annual generation is 246,000,000 kilowatthours.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10849–000.

c. *Date filed:* November 27, 1989.

d. *Applicant:* Hydro-Power of Nevada, Inc.

e. *Name of Project:* Empire.

f. *Location:* On the Snake River, in Gooding County, Idaho Township 9 S Range 14 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Carl L. Myers, Myers Engineering Company, 750 Warm Springs Avenue, Boise, ID 83301, (208) 773–0404.

i. *FERC Contact:* Michael Spencer at (202) 357–0846.

j. *Comment Date:* March 26, 1990.

k. *Description of Project:* The proposed project would consist of: (1) A 7-foot-high weir at elevation 2,945 feet msl; (2) a 700-foot-long, 15-foot-high earthen dike which will form; (3) a 700-foot-long, 15-foot-deep canal; (4) a powerhouse containing two generating units with a combined capacity of 3,300 kW and an average annual generation of 48,180 MWh; (5) a 50-foot-long tailrace; and (6) a 2,200-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $120,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date of the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-Mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to Fededal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and State agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Public Law No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. Section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filng, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments—The Commisison requests that the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agenc(ies), for the purposes set forth in section 408 of the Energy Security Act of 1980, file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 26, 1990; Washington, DC

Lois D. Cashell,

Secretary.

[FR Doc. 90–2244 Filed 1–31–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–564–000, et al.]

Columbia Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Company

[Docket No. CP90–564–000]

January 22, 1990.

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–564–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport natural gas on an interruptible basis for CNG Development Company (CNG Development). Columbia explains that service commenced November 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–843–000. Columbia further explains that the peak day quantity would be 25,00 MMBtu, the average daily quantity would be 20,000 MMBtu, and that the annual quantity would be 9,125,000 MMBtu. Columbia explains that it would receive natural gas for CNG Development's account at existing points of receipt on its system and would redeliver the gas to CNG Development at existing delivery points on its system.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP90–535–000]

January 22, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP90–535–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Transport Gas Corporation (Transport) under its blanket authorization issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully

set forth in the request which is on file with the Commission and open to public inspection.

Columbia would perform the proposed interruptible transportation service for Transport, pursuant to an interruptible transportation service agreement dated December 5, 1989.[1] The transportation agreement is effective as of the date of its full execution and shall continue in full force and effect from month-to-month thereafter unless terminated by either party upon thirty days written notice. Columbia proposes to transport up to a maximum of 2,500 MMBtu [2] of natural gas per day; 2,000 MMBtu on an average day; and 912,500 MMBtu annually. Columbia proposes to receive the gas from various Appalachian meters on its system and deliver the subject gas at various existing points located on its system. Columbia avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Columbia commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90-860-000.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corporation

[Docket No. CP90-547-000]

January 22, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-547-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Texas-Ohio Gas, Inc. (Texas-Ohio) under Columbia's certificate issued in Docket No. CP86-240-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia proposes to transport on an interruptible basis up to 1,348 MMBtu [1] equivalent of natural gas per day for Texas-Ohio pursuant to a transportation agreement dated December 11, 1989.[2] It is stated that the projected average day and annual quantities are 1,078 and 492,020 MMBtu, respectively.

Columbia states that no facilities would be constructed to provide this service, and that it would receive the gas at various receipt points on its system. The delivery points would be at existing interconnections with Columbia's system. It is further stated that service commenced on November 1, 1989, pursuant to § 284.223(a) of the Commission's Regulations as reported in Docket No. ST90-859-000.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP90-557-000]

January 22, 1990.

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP90-557-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Riley Natural Gas Company (Riley) under its blanket authorization issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to a maximum of 75,000 MMBtu [1] of natural gas per day; 60,000 MMBtu on an average day; and 27,375,000 MMBtu annually. Columbia proposes to receive the gas from various Appalachian meters on its system and deliver the subject gas at various existing points located on its system. Columbia avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Columbia commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90-947-000.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP90-531-000]

January 22, 1990.

Take notice that on January 16, 1990, Southern Natrual Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-531-000 a request pursuant to §§ 157.205 and 284.223(b) of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Equitable Resources Marketing Company (Equitable), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000 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.

Southern states that it would perform the proposed transportation service for Equitable pursuant to a service agreement dated October 19, 1989, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party and provides that Southern shall transport on an interruptible basis up to a maximum quantity of 100,000 MMBtu of gas on a peak day. Southern further states that Equitable has informed Southern that although it will request the full 100,000 MMBtu to be transported on an average day, Equitable has only requested approximately 200 MMBtu to be transported on an average day at this time resulting in an anticipated annual volume of 73,000 MMBtu. Southern proposes to receive the gas at various receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to various points in Mississippi. Southern asserts that no new facilities are required to implement the proposed service.

Southern states that on November 18, 1989, it commenced transportation of natural gas for Equitable pursuant to the 120-day self-implementing provision of

[1] By letter dated January 9, 1990, Columbia notified Transport of its intent to clarify the fact that the effective date of the transportation agreement is November 1, 1989.

[2] Columbia states that all quantities are stated on an MMBtu basis pursuant to § 284.4 of the Regulations and have been converted from the dekatherm basis stated in the transportation service agreement on the assumption that the average energy content of the gas to be transported is 1,000 Btu per cubic foot.

[1] Columbia states that all quantities are stated on an MMBtu basis pursuant to § 284.4 of the Regulations and have been converted from the dekatherm basis stated in the transportation service agreement on the assumption that the average energy content of the gas to be transported is 1,000 Btu per cubic foot.

[2] By letter dated January 9, 1990, Columbia notified Texas-Ohio of its intent to clarify the fact that the effective date of the transportation agreement is November 1, 1989.

[1]

§ 284.223(a)(1) of the Commission's Regulations as reported with the Commission in Docket No. ST90–1075–000. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP90–543–000]

January 22, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP90–543–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization ro provide an interruptible transportation service for Gulf Ohio Corporation (Gulf), under the blanket certificate issued in Docket No. CP86–240–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia Gas states that pursuant to a service agreement dated December 11, 1989, it proposes to receive up to 499,535 dt equivalent of natural gas per day at various Appalachian meters on Columbia Gas' system and redeliver the gas at existing interconnections with Columbia Gas' transmission system. Columbia Gas estimates that the peak day, average day and annual volumes would be 499,535 million Btu, 399,628 million Btu, and 182,330,275 million Btu, respectively. It is stated that on November 1, 1989, Columbia Gas initiated a 120-day transportation servitce for Gulf under § 284.223(a), as reported in Docket No. ST90–850–000.

Columbia Gas further states that no facilities need be constructed to implement the service. It is stated that the agreement would continue on a month-to-month basis until terminated by either party upon thirty days' written notice to the other. Columbia Gas proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP–566–000]

January 22, 1990.

Take notice that on January 18, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642 filed in Docket No. CP90–566–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American Central), a marketer, under the 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 request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated November 30, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for American Central. Trunkline states that it would transport the gas from receipt points in the States of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Texas Eastern in Williamson County, Illinois.

Trunkline advises that service under § 284.223(a) commenced December 5, 1989, as reported in Docket No. ST90–1345. Trunkline further advises that it would transport 25,000 dt on an average day and 9,125,000 dt annually.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Trunkline Gas Company

[Docket No. CP90–508–000]

January 22, 1990.

Take notice that on January 11, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–508–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Access Energy Corporation (Access), under Trunkline's 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 request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport, on an interruptible basis, up to 50,000 Dt. equivalent of natural gas per day for Access. Trunkline states that construction of facilities would not be required to provide the proposed service.

Trunkline further states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 Dt. equivalent, 10,000 Dt. equivalent and 10,000,000 Dt. equivalent respectively.

Trunkline advises that service under § 284.223(a) commenced November 21, 1989, as reported in Docket No. ST90–1087.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP90–532–000]

January 22, 1990.

Take notice that on January 16, 1990, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–532–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Houston Gas Exchange Corporation (Houston), under Southern's blanket certificate issued in Docket No. CP88–316–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 25,000 MMBtu of natural gas per day for Houston. Southern states that construction of facilities would not be required to provide the proposed service.

Southern further states that the maximum day, average day, and annual transportation volumes would be approximately 25,000 MMBtu, 10,500 MMBtu and 3,832,500 MMBtu respectively.

Southern advises that service under Section 284.223(a) commenced November 18, 1989, as reported in Docket No. ST90–1072.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Columbia Gas Transmission Corporation

[Docket No. CP90–558–000]

January 22, 1990.

Take notice that on January 17, 1990, Columbia Cas Transmission

Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–558–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Peake Operating Company (Peake), under Columbia's blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport, on an interruptible basis, up to 3,000 MMBtu of natural gas per day for Peake. Columbia states that construction of facilities would not be required to provide the proposed service.

Columbia further states that the maximum day, average day, and annual transportation volumes would be approximately 3,000 MMBtu, 2,400 MMBtu and 1,095,000 MMBtu respectively.

Columbia advises that service under § 284.223(a) commenced November 1, 1989, as reported in Docket No. ST90–856.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Columbia Gas Transmission Corporation

[Docket No. CP90–542–000]

January 22, 1990.

Take notice that on January 16, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–542–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas on behalf of Equitable Resources Energy Company (Equitable), under Columbia's blanket certificate issued in Docket No. CP86–240–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport, on an interruptible basis, up to 30,000 MMBtu equivalent of natural gas on a peak day, 24,000 MMBtu equivalent on an average day and 10,950,000 MMBtu equivalent on an annual basis for Equitable. It is stated that Columbia would perform the transportation service under its Rate Schedule ITS. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced November 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–849.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP90–522–000]

January 22, 1990.

Take notice that on January 17, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–522–000 a request pursuant to § 157.205 of the Commission's Regulations to construct a twelve-inch delivery tap, located on United's 24-inch pipe Index No. 129, to provide interruptible transportation service for Lone Star Gas Company (Lone Star), a local distribution company, located in Fort Bend County, Texas under United's blanket certificate issued in Docket No. CP82–430–000, 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.

United states that it would construct and operate a twelve-inch delivery tap, metering and appurtenant facilities located within its existing natural gas pipeline right-of-way in Fort Bend County, Texas to transport for Lone Star an estimated 100,000 Mcf of natural gas per day for resale to residential and commercial end-users. Further, United states that it would provide this interruptible transportation service for Lone Star under United's Rate Schedule ITS pursuant to United's blanket certificate issued in Docket No. CP88–6–000.

United states that the addition of new delivery points is not prohibited by its existing tariff and it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers.

Comment date: March 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

13. Trunkline Gas Company

[Docket No. CP90–567–000]

January 23, 1990.

Take notice that on January 18, 1990, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP90–567–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of NICOR Exploration Company (NICOR), under Trunkline's 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 application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 4,000 dt of natural gas per day for NICOR from receipt points located in Illinois, Louisiana, offshore Louisiana, Tennessee, offshore Texas and Texas to a delivery point located in St. Mary Parish, Louisiana. Trunkline anticipates transporting, on an average day 3,500 dt and an annual volume of 1,277,500 dt.

Trunkline states that the transportation of natural gas for NICOR commenced December 1, 1989, as reported in Docket No. ST90–1346–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86–586–000.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

14. Columbia Gas Transmission Corporation

[Docket No. CP90–562–000]

January 23, 1990.

Take notice that on January 17, 1989, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–562–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas on behalf of Consolidated Fuel Company (Consolidated), under Columbia's blanket certificate issued in Docket No. CP86–240–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport, on an interruptible basis, up to 100,000 MMBtu equivalent of natural gas on a peak day, 80,000 MMBtu equivalent on an average day and 36,500,000 MMBtu equivalent on an annual basis for Consolidated. It is stated that Columbia would perform the transportation service under its Rate Schedule ITS. It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced November 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–845.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. El Paso Natural Gas Company

[Docket No. CP90-511-000]

January 23, 1990.

Take notice that on January 12, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request at Docket No. CP90-511-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Shell Western E & P, Inc. (Shell Western), a gas producer, under its blanket certificate issued at Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Pursuant to a transportation agreement dated October 3, 1989, El Paso requests authority to transport up to 10,300 MMBtu of natural gas per day for Shell Western. El Paso states that the agreement provides for it to receive the gas at a various existing points of receipt along its Beaver Gathering System in Beaver County, Oklahoma and to redeliver the gas to an existing point of delivery also located in Beaver County, Oklahoma. Shell Western has informed El Paso that it expects to have the full 10,300 MMBtu transported on an average day and, based thereon, El Paso estimates that 3,759,500 MMBtu would be transported annually. El Paso advises that the transportation service commenced on December 1, 1989, as reported at Docket No. ST90-1063-000, pursuant to § 284.223(a) of the Commissions Regulation.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

16. Northern Natural Gas Company

[Docket No. CP90-568-000]

January 23, 1990.

Take notice that on January 18, 1990, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-568-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-435-000 on behalf of Damson Oil Corporation (Damson), a producer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern indicates that service commenced December 1, 1989, as reported in Docket No. ST90-1076-000 and estimates the volumes transported to be 35,000 MMBtu per day on a peak day, 26,250 MMBtu on an average day, and 12,775,000 MMBtu on an annual basis for Damson.

Northern states that no new facilities are to be constructed.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Columbia Gas Transmission Corporation

[Docket No. CP90-540-000]

January 23, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), filed in Docket No. CP90-540-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-240-000 on behalf of Clinton Gas Marketing, Inc. (Clinton), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia indicates that service commenced November 1, 1989, as reported in Docket No. ST90-842-000 and estimates the volumes transported to be 2,568 MMBtu per day on a peak day, 2,054 MMBtu on an average day and 937,320 MMBtu on an annual basis for Clinton.

Columbia states that no new facilities are to be constructed.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Trunkline Gas Company

[Docket No. CP90-509-000]

January 23, 1990.

Take notice that on January 11, 1990, Trunkline Gas Company (Trunkline), filed in Docket No. CP90-509-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 on behalf of Pan National Gas Sales, Inc. (Pan National), a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline indicates that service commenced December 1, 1989, as reported in Docket No. ST90-1226 and estimates the volumes transported to be 200,000 Dt. per day on a peak day and average day, plus 73,000,000 Dt. on an annual basis for Pan National.

Trunkline states that no new facilities are to be constructed.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Columbia Gas Transmission Corporation

[Docket No. CP90-533-000]

January 23, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-533-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Centran Corporation (Centran), under Columbia's blanket certificate issued in Docket No. CP86-240-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 MMBtu of natural gas per day for Centran from various Appalachian meters located on Columbia's pipeline system to delivery points located at existing interconnections with Columbia's Transmission System. Columbia anticipates transporting 40,000 MMBtu of natural gas on an average day and an annual volume of 18,250,000 MMBtu.

Columbia states that the transportation of natural gas for Centran commenced November 1, 1989, as reported in Docket No. ST90-943-000, for a 120-day period pursuant to Section 284.223(a) of the Commission's Regulations and the blanket certificate issued to Columbia in Docket No. CP86-240-000.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Columbia Gas Transmission Corporation

[Docket No. CP90-560-000]

January 23, 1990.

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90-560-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of KV Oil and Gas, Inc. (KV) under its blanket certificate

issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas states that the maximum daily, average daily and annual quantities that it would transport on behalf of KV would be 8,000 MMBtu equivalent of natural gas, 6,400 MMBtu equivalent of natural gas and 2,920,000 MMBtu equivalent of natural gas, respectively.

Columbia Gas indicates that in Docket No. ST90–946–000 filed with the Commission, it reported that transportation service on behalf of KV commenced on November 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. Colorado Interstate Gas Company

[Docket No. CP90–553–000]

January 23, 1990.

Take notice that on January 17, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–553–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Chevron U.S.A. Inc. (Chevron), a producer, under CIG's blanket certificate issued in Docket No. CP88–589–000, et al. 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.

CIG states that it would transport up to 10,000 Mcf per day, for Chevron, pursuant to a Transportation Service Agreement dated October 1, 1989, between CIG and Chevron. CIG further states that it would receive the natural gas from an existing point of receipt on its system in the state of Wyoming and would redeliver the natural gas, less fuel gas and lost and unaccounted-for gas, for the account of Chevron in Sherman County, Texas and Kearny County, Kansas. CIG indicates that the estimated average daily and annual quantities would be 10,000 Mcf and 3,650,000 Mcf, respectively.

CIG states that it commenced the transportation of natural gas for Chevron on November 1, 1989, as reported in Docket No. ST90–634–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

22. Columbia Gas Transmission Corporation

[Docket No. CP90–539–000]

January 23, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–539–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for Energy Marketing Services, Inc. (Energy Marketing), a gas marketer, under Columbia's blanket certificate issued in Docket No. CP86–240–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to a service agreement date November 1, 1989, Columbia requests authorization to transport up to 55,500 MMBtu of natural gas per day for Energy Marketing under Columbia's ITS Rate Schedule. Columbia states that the agreement provides for it to receive the gas from various Appalachian meters located on its system and to redeliver the gas to varous existing points of delivery along its system. Energy Marketing has informed Columbia that it expects average day and annual transportation quantities to be 44,400 and 20,257,500 MMBtu, respectively. Columbia advises that the service commenced on November 1, 1989, as reported in Docket No. ST90–848–000, pursuant to § 284.223 of the Commission's Regulations.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

23. Colorado Interstate Gas Company

[Docket No. CP90–552–000]

January 23, 1990.

Take notice that on January 17, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–552–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Trigen Resources Corporation (Trigen), a marketer, under CIG's blanket certificate issued in Docket No. CP88–589–000, et al. 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.

CIG states that it would transport up to 2,400 Mcf per day, for Trigen, pursuant to a Transportation Service Agreement dated November 1, 1989, between CIG and Trigen. CIG further states that it would receive the natural gas from various existing points of receipt on its system in the states of Colorado and Kansas, and would redeliver the natural gas, less fuel gas and lost and unaccounted-for gas, for the account of Trigen in Moore County, Texas. CIG indicates that the estimated average daily and annual quantities would be 2,400 Mcf and 876,000 Mcf, respectively.

CIG states that it commenced the transportation of natural gas for Trigen on November 1, 1989, as reported in Docket No. ST90–633–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

24. Columbia Gas Transmission Corporation

[Docket No. CP90–563–000]

January 23, 1990.

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–563–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Industrial Energy Services Company (Industrial) under Columbia Gas' blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the National Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas proposes to transport on an interruptible basis up to 25,000 MMBtu of natural gas equivalent per day on behalf of Industrial. Columbia Gas would receive the gas at various existing Appalachian meters on its pipeline system and redeliver equivalent volumes, less fuel used and unaccounted for line loss, at various existing delivery points on its transmission system.

Columbia Gas further states that the estimated average daily and annual quantities would be 20,000 MMBtu and 9,125,000 MMBtu respectively. Service under § 284.223(a) commenced on

November 1 1989, as reported in Docket No. ST90–1095–000, it is stated.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

25. Columbia Gas Transmission Corporation

[Docket No. CP90–546–000]

January 23, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–546–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) to transport natural gas on behalf of Manufacturers Fuel Company (Shipper), under Columbia's blanket certificate issued in Docket No. CP86–240–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport on an interruptible basis up to 19,447 MMBtu equivalent of natural gas on a peak day, 15,558 MMBtu equivalent on an average day and 7,098,155 MMBtu equivalent on an annual basis for Shipper.

It is asserted that the transportation service would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the service commenced November 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–854–000.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

26. ANR Pipeline Company

[Docket No. CP90–551–000]

January 23, 1990.

Take notice that on January 17, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No CP90–551–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for CMS Brokering Company (CMS), under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the National Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 50,000 dt equivalent of natural gas on a peak day, 50,000 dt equivalent on an average day and 18,250,000 dt equivalent on an annual basis for CMS. ANR indicates that it would transport the gas from receipt points in Louisiana, Oklahoma, Texas, Kansas, and the offshore Louisiana and Texas gathering areas, to delivery points located in Michigan.

It is explained that the service commenced November 16, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–1027. ANR indicates that no new facilities would be necessary to provide the subject service.

Comment date: March 9, 1990, in accordance with Standard Pargaraph G at the end of this notice.

27. K N Energy, Inc.

[Docket No. CP90–523–000]

January 23, 1990.

Take notice that on January 16, 1990, K N Energy, Inc. (K N Energy), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP90–523–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate sales taps for the delivery of gas to end users, under authorizations issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request of file with the Commission and open to public inspection.

K N Energy proposes to construct and operate six sales taps to service certain residential and commercial end users located in various counties of Kansas, Nebraska, and Colorado. Peak day and annual deliveries are expected to be 20 Mcf and 1400 Mcf, respectively. K N Energy estimates that the cost of installing the taps, less connecting charges, would be $5,150. Lastly, K N Energy states that the proposed sales taps are not prohibited by any of its existing tariffs and that they are not expected to significantly impact its peak day and annual deliveries.

Comment date: March 9, 1990, in accordance with Standard Pargaraph G at the end of this notice.

28. Columbia Gas Transmission Corporation

[Docket No. CP90–549–000]

January 23, 1990.

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE. Charleston, West Virginia 25314, filed in Docket No. CP90–549–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Blackwater Natural Gas Corporation (Blackwater), under Columbia's blanket certificate issued in Docket No. CP86–240–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to transport, on an interruptible basis, up to a maximum of 2,500 MMBtu of natural gas per day for Blackwater from various Appalachian meters on Columbia's pipeline system to delivery points located at existing interconnections with Columbia's Transmission System. Columbia anticipates transporting 2,000 MMBtu of natural gas on an average day and an annual volume of 912,500 MMBtu.

Columbia states that the transportation of natural gas for Blackwater commenced November 1, 1989, as reported in Docket No. ST90–841–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Columbia in Docket No. CP86–240–000.

Comment date: March 9, 1990, in accordance with Standard Pargaraph G at the end of this notice.

29. Colorado Interstate Gas Company

[Docket No. CP90–576–000]

January 23, 1990.

Take notice that on January 19, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–576–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Chevron U.S.A. Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP86–589, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG states that pursuant to a transportation service agreement dated November 1, 1989, under its Rate Schedule TF–1, it proposes to transport up to 10,000 Mcf per day of natural gas for Chevron. CIG states that it would transport the gas from an existing point of receipt on its system in Wyoming, and would redeliver the gas, less fuel gas and lost and unaccounted-for gas, for the account of Chevron in Hutchinson County, Texas.

CIG advises that service under § 284.223(a) commenced November 1, 1989, as reported in Docket No. ST90–

627–000. CIG further advises that it would transport 10,000 Mcf on an average day and 3,650 MMcf annually.

Comment date: March 9, 1990, in accordance with Standard Paragraph G at the end of this notice.

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. 90–2245 Filed 1–31–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–548–000, et al.]

Columbia Gas Transmission Company, et al.; Natural Gas Certificate Filings

January 24, 1990.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Company

[Docket No. CP90–584.000]

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed a request with the Commission in Docket No. CP90–548–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of O and R Energy Development, Inc. (O & R), a natural gas marketer, under the blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Columbia proposes an interruptible natural gas transportation service of up to 500 MMBtu on a peak day, 400 MMBtu on an average day, and 182,500 MMBtu annually for O & R. Columbia would perform the transportation service under its Rate Schedule ITS. Columbia would use the existing facilities described in Appendix A to the service agreement to receive and deliver gas on O & R's behalf. Columbia states that it commenced transporting natural gas for O & R on November 1, 1989, under the self-implementing authorization of § 284.223 of the Regulations, as reported in Docket No. ST90–855.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP90–571–000]

Take notice that on January 18, 1990, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–571–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Eagle Natural Gas Company (Eagle), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 25,750 MMBtu of natural gas per day for Eagle from receipt points located in Louisiana, Offshore Louisiana, Texas, Mississippi and Alabama to delivery points located in Louisiana and Mississippi. United anticipates transporting 25,750 MMBtu of natural gas on an average day and an annual volume of 9,398,750 MMBtu.

United states that the transportation of natural gas for Eagle commenced November 21, 1989, as reported in Docket No. ST90–1261–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88–6.000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP90–583–000]

Take notice that on January 19, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148–5072, filed in Docket No. CP90–583–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Eagle Natural Gas Company (Eagle), a marketer, under Natural's 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 which is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation service agreement dated February 28, 1989, as amended on November 28, 1989, it proposes to transport up to 16,650 million Btu of natural gas for Eagle. Natural states that it would receive the gas at specified points located in onshore and offshore Texas and Louisiana, Oklahoma, New Mexico, Iowa, and Kansas and redeliver the gas at specified points located in Illinois, Texas, Louisiana, Oklahoma, New Mexico, Iowa, Arkansas, Kansas, and Nebraska. Natural estimates that the maximum day, average day, and annual volumes would be 16,650 million Btu, 7,500 million Btu, and 2,737,500 million Btu, respectively. It is stated that on November 16, 1989, Natural initiated a 120-day transportation service for Eagle under § 284.223(a), as reported in Docket No. ST90–1502–000.

Natural further states that at this time no facilities need be constructed to implement the service. Natural indicates that the service would continue for a primary term expiring February 28, 1993, and month to month thereafter unless terminated on five days notice by either party. Natural proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP90–585–000]

Take notice that on January 19, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S. E., Charleston, West Virginia 25314, filed in Docket No. CP90–585–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Industrial Energy Services Company (Industrial), under Columbia's blanket certificate issued in Docket No. CP86–240–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia requests authorization to transport, on an interruptible basis, up to a maximum of 25,000 MMBtu equivalent of natural gas per day for Industrial received from various points of interconnect with Tennessee Gas

Pipeline Company Panhandle Eastern Pipe Line Company, Columbia Gulf Transmission Company, Texas Gas Transmission Corporation, Texas Eastern Transmission Corporation (Texas Eastern), Transcontinental Gas Pipeline Company (Transco) and Appalachian meters on Columbia's pipeline system and redelivered at existing interconnects with Equitrans, Transco and/or Texas Eastern for delivery to the ultimate end-users. Columbia anticipates transporting, on an average day 20,000 MMBtu equivalent of natural gas and an annual volume of 9,125,000 MMBtu equivalent of natural gas.

Columbia states that the transportation of natural gas for Industrial commenced November 1, 1989, as reported in Docket No. ST90–723–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Columbia in Docket No. CP86–240–000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Columbia Gas Transmission Corporation

[Docket No. CP90–559–000]

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed a request with the Commission in Docket No. CP90–559–000 pursuant to § 157.205 of the Commission's Regulations (18 CFR § 157.205) for authorization to transport natural gas on behalf of NGC Transportation, Inc. (NGC), under Columbia Gas's blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

Columbia Gas would perform the proposed interruptible transportation service for NGC, pursuant to a service agreement for service under ITS rate schedule (Agreement No. 35356). The term of the transportation service is from the date of the transportation agreement's full execution and shall continue in full force and effect from month-to-month thereafter unless terminated by either party upon thirty days written notice to the other. Columbia Gas proposes to transport for NGC, on an interruptible basis, up to 50,000 MMBtu of natural gas on a peak day, 40,000 MMBtu on an average day, and 18,250,000 MMBtu on an annual basis. Columbia Gas states that it would receive the gas for NGC's account at various Appalachian meters on its pipeline system and deliver such gas to existing interconnections with its system. Columbia Gas further states that no new facilities would be required to implement its proposed transportation service for NGC.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Columbia Gas commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90–1094–000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corporation

[Docket No. CP90–537–000]

Take notice that on January 16, 1990, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed a request with the Commission in Docket No. CP90–537–000 pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Columbia Gas Development Corporation (Columbia Development), under Columbia Gas's blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to public inspection.

Columbia Gas would perform the proposed interruptible transportation service for Columbia Development, pursuant to a service agreement for service under ITS rate schedule (Agreement No. 35329). The term of the transportation service is from date of the transportation agreement's full execution and shall continue in full force and effect from month-to-month thereafter unless terminated by either party upon thirty days written notice to the other. Columbia Gas proposes to transport for Columbia Development, on an interruptible basis, up to 50,000 MMBtu of natural gas on a peak day, 40,000 MMBtu on an average day, and 18,250,000 MMBtu on an annual basis. Columbia Gas states that it would receive the gas for Columbia Development's account at various Appalachian meters on its pipeline system and deliver such gas to existing interconnections with its system. Columbia Gas states that no new facilities would be required to implement its proposed transportation service for Columbia Development.

It is expained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Columbia Gas commenced such self-implementing service on November 1, 1989, as reported in Docket No. ST90–844–000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Texas Eastern Transmission Corporation

[Docket No. CP90–565–000]

Take notice that on January 18, 1990, Texas Eastern Transmission Corporation (Texas Eastern), One Houston Center, Houston, Texas 77010, filed in Docket No. CP90–565–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transmission service for Centran Corporation (Centran), a broker, under Texas Eastern's blanket certificate issued in Docket No. CP88–136–000 pursuant to section 7 of the Natural Gas Act, all as more set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern states that pursuant to a service agreement dated November 7, 1989, it proposes to transport up to 15,000 dt equivalent of natural gas per day for Centran. Texas Eastern states that it would receive the gas at specified points in onshore and offshore Louisiana, Texas, Arkansas, and Indiana, and would redeliver the gas at specified points on it system in onshore and offshore Louisiana, Mississippi, Ohio, Pennsylvania, New Jersey, and New York. Texas Eastern estimates that the maximum and average day volumes would be 15,000 dt equivalent of natural gas and that the annual volumes would be 5,475,000 dt equivalent of natural gas. It is stated that on November 16, 1989, Texas Eastern initiated a 120-day transportation service for Centran under § 284.223(a), as reported in Docket No. ST90–958–000.

Texas Eastern further states that no facilities need be constructed to implement the service. It is stated that the primary term of the service agreement expires November 1, 1990, and would continue on a month-to-month basis until terminated by 12 month's written notice. Texas Eastern proposes to charge rates and abide by

the terms and conditions of its Rate Schedule IT–1.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Columbia Gas Transmission Corporation

[Docket No. CP90–556–000]

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP90–556–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Dome Energicorp (Shipper) under the blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Columbia states that it proposes to transport up to 2,900 MMBtu of natural gas for Shipper on a peak day, 2,320 MMBtu on an average day and 1,058,000 MMBtu annually, under ITS Rate Schedule. This service was reported to the Commission in Docket No. ST90–846–000. Columbia further states that construction of facilities will be required to provide the proposed service.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

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. 90–2246 filed 1–31–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–529–000, et al.]

Texas Eastern Transmission Corporation, et al.; Natural Gas Certificate Filings

January 25, 1990.

Take notice that the following filings have been made with the Commission:

1. Texas Eastern Transmission Corporation

[Docket No. CP90–529–000]

Take notice that on January 16, 1990, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP90–529–000, a request pursuant to section 7(b) of the Commission's Regulations for authorization to abandon firm transportation service provided for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that it currently provides up to 1,500 dt per day of firm transportation service for Southern. It is said that Southern has provided Texas Eastern notice of cancellation in accordance with Article II of the Transportation Agreement dated July 18, 1984. Texas Eastern further states that the firm transportation service and transportation of liquids and liquefiables is being terminated, and that there will be no abandonment of any facilities.

Comment date: February 15, 1990, in accordance with Standard Paragraph F at the end of the notice.

2. ARCO Oil and Gas Company, Inc.

[Docket No. CP90–504–000]

Take notice that on January 10, 1990, ARCO Oil and Gas Company, Inc. (AOGC), Post Office Box 2819, Dallas, Texas 75221, filed in Docket No. CP90–504–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR § 385.207) for a declaratory order that a certain facility is exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

AOGC states that on March 31, 1989, it entered into a Settlement Agreement with Southern Natural Gas Company (Southern) resolving take-or-pay disputes concerning certain contracts, including contracts covering AOGC gas produced from the Carthage Field. AOGC explains that the Settlement Agreement grants AOGC the option to acquire Southern's Carthage Field compressor station. AOGC states that it intends to exercise the option to acquire the facility.

AOGC explains that the Carthage Field contains more than 1100 wells, of which only 60 low pressure wells are operated by AOGC. AOGC further explains that the compressor which AOGC plans to acquire from Southern would compress gas only from these 60 wells. AOGC states that to complete the production process it is necessary to compress the gas to a pressure sufficient to permit it to enter into Southern's system. AOGC states that the compressor is located downstream of AOGC's Carthage Gas Processing Plant.

AOGC claims that its current Carthage Field operations are solely involved with the production, gathering, processing and sale of gas from wells it operates. AOGC alleges that it performs no jurisdictional transportation functions.

AOGC states that compression is an integral element in the production and gathering of natural gas from AOGC's Carthage Field wells because compression is required to cause delivery into Southern's system. AOGC states that since the primary function of the Carthage Field compressor is related to the production process, the facility is exempted from Commission jurisdiction under section 1(b) of the Natural Gas Act.

Comment date: February 15, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP90–589–000]

Take notice that on January 23, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–589–000 a request pursuant to section 157.205 and 284.23 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal), under the blanket certificate issued in Docket No. CP88–532–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated July 13, 1989, it proposes to receive up to 50,000 dt equivalent of natural gas per day at a specified point located in the Grand Isle Area, state waters, Offshore Louisiana, and redeliver the gas at an existing

interconnect with Tennessee Gas Pipeline Company located in La Fourche Parish, Louisiana. ANR estimates that the peak day and average day volumes would be 50,000 dt equivalent of natural gas and that the annual volumes would be 18,250,000 dt equivalent of natural gas. It is indicated that on December 1, 1989, ANR initiated a 120-day transportation service for Coastal under § 284.223(a), as reported in Docket No. ST90–1203–000.

ANR further states that no facilities need be constructed to implement the service. ANR states that the primary term of the agreement expires on July 31, 1994, but the service would continue on a month-to-month basis until terminated on thirty days notice by either ANR or Coastal. ANR proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline LNG Company

[Docket No. CP90–524–000]

Take notice that on January 16, 1990, Trunkline LNG Company (TLC), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP90–524–000 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act, as amended, and § 157.7 of the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, for a certificate of public convenience and necessity authorizing TLC to construct and operate a 16-inch "Header" for delivery of LNG at the outlet of TLC's terminal, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The proposed facility will provide alternative access points for volumes of regasified LNG to potential customers which will assist TLC to increase the utilization of its facilities. The estimated cost of these new facilities is $680,000 which will be financed from funds on hand.

Comment date: February 15, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP90–577–000]

Take notice that on January 19, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–577–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Jerome P. McHugh (McHugh), a producer of natural gas, under its blanket authorization issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for McHugh, pursuant to an interruptible transportation service agreement dated October 20, 1989, as amended October 26 and December 1, 1989. The transportation agreement is effective for a term of two years and month to month thereafter until terminated by either party on thirty days written notice. Northwest proposes to transport no more than 20,000 MMBtu on a peak day; approximately 5,000 MMBtu on an average day; and on an annual basis approximately 1,825,000 MMBtu of natural gas for McHugh. Northwest proposes to transport the subject gas from the Ignacio Plant receipt point in La Plata County, Colorado, to El Paso Natural Gas Company at the Ignacio delivery point in La Plata County, Colorado. Northwest states that no new facilities will be required to provide this transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on December 1, 1989, as reported in Docket No. ST90–1247–000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. Colorado Interstate Gas Company

[Docket No. CP90–495–000]

Take notice that on January 8, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–495–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon sales service performed by CIG for Public Service Company of Colorado (Public Service), Cheyenne Light, Fuel and Power Company (Cheyenne), Western Gas Supply Company (Western) and Raton Gas Transmission Company (Raton), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to abandon a total of 220,947 Mcf of General Daily Entitlement (GDE) and 75,819.2 MMcf of Total Annual Entitlement (TAE) as follows:

Customer	Proposed decrease in GDE	Proposed decrease in TAE
Cheyenne	13,680	4,467.0
Public Service	154,073	52,602.0
Raton	700	198.2
Western	52,494	18,552.0
Total decrease	220,947	75,819.2

CIG proposes that certain of these decreases be made effective retroactively on October 1, 1989, and certain others be made retroactively on December 1, 1989. Further, CIG states that the proposed changes for Cheyenne be effective on March 1, 1990, and the proposed changes for Public Service be effective on July 1, 1990.

Comment date: February 15, 1990, in accordance with Standard Paragraph F at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP90–575–000]

Take notice that on January 19, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP90–575–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service on behalf of Victoria Gas Corporation (Victoria), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88–6–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it would transport a maximum daily quantity of 103,000 MMBtu for Victoria pursuant to an Interruptible Gas Transportation Agreement, dated July 14, 1988, as amended November 13, 1989, between United and Victoria. United further states that it would receive the natural gas at existing points of receipt in offshore Louisiana and Texas and in the states of Texas, Mississippi, Louisiana and Alabama and would redeliver the natural gas at existing points of delivery in the states of Louisiana, Texas, Florida, Alabama and Mississippi. United indicates that the estimated average day and annual quantities to be transported for Victoria would be 103,000 MMBtu and 37,595 MMBtu, respectively.

United states that it commenced the transportation of natural gas for Victoria on November 28, 1989, as reported in

Docket No. ST90–1009–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)).

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Colorado Interstate Gas Company

[Docket No. CP90–593–000]

Take notice on January 22, 1990, Colorado Interstate Gas Company (CIG) P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90–593–000, a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–589–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport natural gas on an interruptible basis for Gastrak Corporation (Gastrak). CIG explains that service commenced November 6, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–637–000. CIG further explains that the peak day quantity would be 1,250 Mcf, the average daily quantity would be 1,250 Mcf, and that the annual quantity would be 456 MMcf. CIG explains that it would receive natural gas for Gastrak's account at an existing point of receipt on its system in Colorado and would redeliver the gas to Gastrak in Kearny County, Kansas.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Northwest Pipeline Corporation

[Docket No. CP90–578–000]

Take notice on January 19, 1990, Nothwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–578–000 a request pursuant to § 157.205 (18 CFR 157–205) of the Commission's Regulations for authorization to transport natural gas on behalf of Ladd Petroleum Corporation (Ladd), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 2,500 MMBtu equivalent of natural gas on a peak day for Ladd, 250 MMBtu equivalent on an average day and 90,000 MMBtu equivalent on an annual basis. It is stated that Northwest would receive the gas for Ladd's account at the Ignacio Plant receipt point in La Plata County, Colorado, and that Northwest would deliver equivalent volumes at an interconnection with El Paso Natural Gas Company at the Ignacio delivery point in La Plata County, Colorado. It is explained that the service commenced December 1, 1989, under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST90–1249.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP90–579–000]

Take notice on January 19, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–579–000, a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service for National Cooperative Refinery Association (National), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP88–576–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that, pursuant to a transportation service agreement dated November 22, 1989, it proposes to transport up to 8,000 MMBtu of natural gas per day under its TI–1 Rate Schedule for National. Northwest proposes to transport the subject gas from an exiting point of receipt located at the Ignacio Plant in LaPlata County, Colorado to an existing point of interconnection with El Paso Natural Gas Company also located in LaPlata County, Colorado. Northwest estimates that the average day, and annual transportation volumes would be 500 MMBtu and 180,000 MMBtu, respectively. Northwest advises that the service commenced December 1, 1989, as reported in Docket No. ST90–1248–000 (filed December 29, 1989), pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

11. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP90–592–000]

Take notice that on January 22, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP90–592–000 a request pursuant to section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under Northern's 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 application which is on file with the Commission and open to public inspection.

Northern requests authorization to transport on an interruptible basis up to a maximum of 25,000 MMBtu of natural gas per day for Texican from receipt points located in Texas, Louisiana, Oklahoma and Mississippi to delivery points located in Louisiana and Texas. Northern anticipates transporting 18,750 MMBtu of natural gas on an average day and an annual volume of 9,125,000 MMBtu.

Northern states that the transportation of natural gas for Texican commenced November 30, 1989, as reported in Docket No. ST90–1184–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86–435–000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

12. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP90–569–000]

Take notice that on January 18, 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. CP90–569–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Centran Corporaton (Centran), a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86–435–000 all as more fully set forth in the application of file with the Commission and open to public inspection.

Nothern requests authority to transport up to 50,000 MMBtu of natural gas per day on an interruptible basis for Centran pursuant to a transportation agreement date October 13, 1989. Northern indicates that it would receive the gas various existing points of receipt on Northern's pipeline system and

redeliver the gas at various delivery points on Northern's pipeline system. Nothern indicates that the total volume of gas to be transported for Centran on an average day would be 37,500 MMBtu and on an annual basis 18,250,000 MMBtu.

Northern states that it commenced service for Centran on December 1, 1989, under §284.223(a) as reported in Docket No. ST90–1122–000

Comment date: March 12, 1990, in accordance with Standards Paragraph G at the end of this notice.

13. Columbia Gas Transmission Corporation

[Docket No. CP90–584–000]

Take notice that on January 19, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S. E., Carleston, West Virginia 25314, filed in Docket No. CP90–584–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP86–240–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport natural gas on an interruptible basis for Energy Marketing Exchange, Inc. (EME). Columbia explains that service commenced November 9, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90–722–000. Columbia further explains that the peak day quantity would be 50,000 MMBtu, the average daily quantity would be 40,000 MMBtu, and that the annual quantity would be 18,250,000 MMBtu. Columbia explains that it would receive natural gas for EME's account at existing points of receipt on its system and would redeliver the gas to Texas Eastern Transmission Corporation at Waynesburg, Pennsylvania or Pleasant Exchange, Ohio.

Comment date: February 15, 1990 in accordance with Standard paragraph F at the end of the notice.

14. United Gas Pipe Line Company

[Docket No. CP90–570–000]

Take notice that on January 18, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket NO. CP90–570–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Graham Energy Marketing Corp. (Graham), a marketer of natural gas, under its blanket certificate issued in Docket No. CP88–6–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas from numerous receipt points on its system to numerous points of delivery located in Louisiana, Texas, Mississippi, and Florida.

United further states that the maximum daily and average quantities that it would transport for Seagull would be 123,600 MMBtu equivalent, and the annual quantities would be 45,114,000 MMBtu equivalent of natural gas. United indicates that in Docket No. ST90–1260 filed with the Commission on December 29, 1989, it reported that transportant service for Graham began on December 1, 1989, under the 120-day automatic authorization provisions of § 284.233

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

15. Texas Gas Transmission Corporation

[Docket No. CP90–568–000]

Take notice that on January 22, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensbore, Kentucky 42301, filed in Docket No., CP90-586–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal Marketing), a marketer, under the blanket certificate issued in Docket No. CP88–686–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated October 7, 1988, under its Rate Schedule IT, it proposes to transport up to 300,000 MMBtu per day equivalent of natural gas for Coastal Marketing. Texas Gas states that it would transport the gas from multiple receipt points as shown in Exhibit "B" of the transportation agreement and would deliver the gas to delivery points in Ohio and Indiana, as shown in Exhibit "C" of the agreement. It is stated that the ultimate recipient of the gas is Cincinnati Gas and Electric Company.

Texas Gas advises that service under § 284.223(a) commenced December 12, 1989, as reported in Docket No. ST90–1117. Texas Gas further advises that it would transport 100,000 MMBtu on an average day and 36,500,000 MMBtu annually.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

Northwest Pipeline Corporation

[Docket No. CP90–582–000]

Take notice that on January 19, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–582–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on an interruptible basis for Blackwood & Nichols Co., Ltd. (Blackwood), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 20,000 MMBtu of natural gas on a peak day, 7,000 MMBtu on an average day and 2,500,000 MMBtu on an annual basis for Blackwood pursuant to Northwest's Rate Schedule TI–1. Northwest indicates that, using existing facilities, it would transport the gas from the Ignacio Plant receipt point in La Plata County, Colorado to El Paso Natural Gas Company at the Ignacio delivery point in La Plata County, Colorado.

It is explained that the service commenced December 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–1246.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

17. Columbia Gas Transmission Corporation

[Docket No. CP90–561–000]

Take notice that on January 17, 1990, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP90–561–000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for Ramco Energy Corporation (Ramco), under Columbia's blanket certificate issued in Docket No. CP86–240–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Pursuant to a service agreement dated November 1, 1989, Columbia requests authorization to transport up to 10,000 MMBtu of natural gas per day for Ramco under Columbia's ITS Rate Schedule. Columbia states that the agreement provides for it to receive the gas at various Appalachian meters located on its system and to redeliver the gas to various existing points of delivery along its system. Ramco has informed Columbia that it expects average day and annual transportation quantities to be 8,000 and 3,650,000 MMBtu respectively. Columbia advises that the service commenced on November 1, 1989, as reported in Docket No. ST90–1093–000, pursuant to § 284.223 of the Commission's Regulations.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

18. Northwest Pipeline Corporation

[Docket No. CP90–581–000]

Take notice that on January 19, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–581–000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Tiffany Gas Company (Tiffany), a producer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 800 MMBtu of natural gas equivalent per day for Tiffany pursuant to a gas transportation agreement dated December 1, 1989, between Northwest and Tiffany. Northwest would receive the gas at the Ignacio plant receipt point in La Plata County, Colorado and redeliver equivalent volumes, less fuel and lost and unaccounted for volumes, at the Ignacio delivery point in La Plata County, Colorado.

Northwest further states that the estimated average daily and annual quantities would be 100 MMBtu and 36,500 MMBtu, respectively. Services under § 284.223(a) commenced on December 1, 1989, as reported in Docket No. ST90–1251–000, it is stated.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

19. Northwest Pipeline Corporation

[Docket No. CP90–598–000]

Take notice that on January 22, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90–598–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Enron Oil & Gas Company (Enron), a producer of natural gas, under its blanket authorization issued in Docket No. CP86–578–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest would perform the proposed interruptible transportation service for Enron, pursuant to an interruptible transportation service agreement dated June 19, 1989. The transportation agreement is effective for a term until July 31, 1989, and month to month thereafter until terminated by either party on thirty days written notice. Northwest proposes to transport no more than 50,000 MMBtu on a peak day; approximately 800 MMBtu on an average day; and on an annual basis approximately 300,000 MMBtu of natural gas for Enron. Northwest proposes to transport the subject gas through its system from any transportation receipt point on its system to any transportation delivery point on its system. Northwest states that no new facilities will be required to provide this transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Northwest commenced such self-implementing service on December 2, 1989, as reported in Docket No. ST90–1413–000.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

20. Texas Gas Transmission Corporation

[Docket No. CP90–588–000]

Take notice that on January 22, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–588–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Falcon Seaboard Gas Company (Falcon Seaboard), under the blanket certificate issued in Docket No. CP88–686–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated September 21, 1989, under its Rate Schedule IT, it proposes to transport up to 15,000 MMBtu per day equivalent of natural gas for Falcon Seaboard. Texas Gas states that it would transport the gas from receipt points located in West Cameron Area Blocks 237 "A" and 249, offshore Louisiana, and would deliver the gas to a delivery point in Block 250, West Cameron Area. It is stated that the recipient of the gas is Texas Easter Gas Marketing.

Texas Gas advises that service under § 284.223(a) commenced December 12, 1989, as reported in Docket No. ST90–1118. Texas Gas further advises that it would transport 10,000 MMBtu on an average day and 3,650,000 MMBtu annually.

Comment date: March 12, 1990, in accordance with Standard Paragraph G at the end of this notice.

21. United Gas Pipe Line Company

[Docket No. CP90–526–000]

Take notice that on January 16, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed an application, as supplemented on January 22, 1990, to abandon by conveyance its Mud Lake Line, located in Cameron Parish, Louisiana and Jefferson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that as a part of an overall settlement agreement with ANR Pipeline Company (ANR) it intends to convey to ANR the Mud Lake Line. It is indicated that under the settlement agreement, the conveyance should occur no later than March 1, 1990. United states that it would continue to provide sales service to Entex, Inc., a Division of Arkla, Inc., under a transportation arrangement between United and ANR.

Comment date: February 15, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest

in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 90–2247 Filed 1–31–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–169–048]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 26, 1990

Take notice that CNG Transmission Corporation ("CNG"), on January 23, 1990, pursuant to Section 4 of the Natural Gas Act, and in compliance with the terms and conditions of CNG's February 13, 1986, Stipulation and Agreement (Article VII) in Docket No. RP85–169, the Presiding ALG's March 3, 1987, Initial Decision on the reserved issue of GSS allocation, the Commission's May 2, 1989, and October 10, 1989, orders in this proceeding, and in response to the January 12, 1990, letter order in this proceeding, files six (6) copies of the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Fifth Substitute Thirteenth Revised Sheet No. 31

Alternate Fifth Substitute Thirteenth Revised Sheet No. 31

The proposed effective date of this filing is November 1, 1989.

CNG states that the purpose of the filing is to comply with the above-referenced orders of the Commission in this proceeding.

CNG's primary tariff sheet reflects the use of base period volumes for allocation purposes and test period volumes for rate design purposes, the method rejected by the January 12, 1990, letter order. CNG believes that it is appropriate to refile on this method, because it incorporates the allocation method that the Commission explicitly approved in its final order on the GSS allocation issue.

In the event that the Commission does not grant rehearing of its January 12, 1990, order and accept the primary filing, CNG respectfully requests that the alternate tariff sheet be made effective on November 1, 1989. The alternate filing would design GSS rates and allocate costs using the test period data filed in CNG's current rate case in Docket No. RP90–27.

Copies of the filing were served upon CNG's sales customers as well as 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 February 2, 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. 90–2248 Filed 1–31–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–56–001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 26, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on January 22, 1990, pursuant to Section 4 of the Natural Gas Act and Ordering Paragraph (C) of the Commission's order issued January 5, 1990 in Docket No. RP90–56–000, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Effective Date January 1, 1990

First Substitute Fifteenth Revised Sheet No. 31

First Substitute Eighth Revised Sheet No. 32

Substitute Second Revised Sheet No. 39

Effective Date February 1, 1990

Substitute Sixteenth Revised Sheet No. 31

Effective Date February 4, 1990

Substitute Alternate Sixteenth Revised Sheet No. 31

The purpose of the filing is to revise the tariff sheets that CNG filed as part of its take-or-pay recovery filing on December 8, 1989, in Docket No. RP90–56–000, and those filed on January 5, 1990, as part of an out-of-cycle PGA in Docket No. TQ90–2–22–000. The revisions eliminate interest accrued on take-or-pay principal payments prior to January 1, 1990, in compliance with the Commission's order issued January 5, 1990 in Docket No. RP90–56–000.

Copies of the filing were served upon CNG's customers as well as 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 sections 385.214 and 385.211). All protests should be filed on or before February 2, 1990. Protests will be considered by the Commission in determining the appropropriate 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. 90-2249 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TO90-5-4-000]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

January 26, 1990.

Take notice that on January 17, 1990, Granite State Gas Transmission Inc. (Granite State), 120 Royal Street, Canton, Massachusetts 02021 tendered for filing with the Commission Substitute Thirty-Second Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1 containing changes in rates for effectiveness on January 1, 1990.

According to Granite State, the revised sales rates on Substitute Thirty-Second Revised Sheet No. 7 reflect changes in its purchased gas costs for the first quarter of 1990 primarily attibutable to changes in the projected cost of gas purchased from Tennessee Gas Pipeline Company (Tennessee). Granite State's largest supplier. Granite State further states that the revised rates on Substitute Thirty-Second Revised Sheet No. 7 reflect Tennessee's revised January 1, 1990 rates in Docket No. TA90-1-9-001 reclassifying its Canadian gas costs and the effect of Tennessee's out-of-cycle purchased gas cost filing on December 26, 1989 in Docket No. TQ90-2-9-000.

It is stated that the proposed rate changes are applicable to Granite State's wholesale sales to Bay State Gas Company and Northern Utilities, Inc. Granite State further states that copies of its filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 Steet, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 5, 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. 2250-Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-259-013, RP89-136-013]

Northern Natural Gas Company Division of Enron Corp.; Motion to Implement Settlement Rates

January 26, 1990.

Take notice that on January 16, 1990, Northern Natural Gas Company (Northern) filed a motion requesting permission to implement on February 1, 1990 the settlement rates approved by Commission order issued December 29, 1989.

Northern states that it is requesting permission to implement the settlement rates contained in Appendix A (attached to the filing) as adjusted for any changes in the PGA, ANGTS, GRI and ACA on February 1, 1990. It states that this will include commencement of billing of the take-or-pay surcharge set forth in Section V of the settlement on February 1, 1990 and establishment of the take-or-pay recovery period from February 1, 1990 to January 31, 1995.

Northern states that it is in the public interest to implement the settlement rates, on an interim basis, commending February 1, 1990. Northern states that implementation of the settlement rates at this time will provide for the benefits of a rate decrease representing an annual reduction in the cost of service of approximately $83 million. It states that the settlement provides for a substantial reduction in its cost of service and is therefore appropriate for the customers to realize the resulting lower rates during the winter heating season.

Northern states that the effective date of the settlement is nearly four months later than originally anticipated by the parties, and further delay will erode the benefits of the settlement.

Northern states that this motion is subject to the condition that should the Commission modify the December 29, 1989 order in such a manner as to make the settlement no longer acceptable to Northern, Northern reserves the right to reject the settlement and resinstate the filed rates prospectively.

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 February 2, 1990. Protests will be considered by the commission in determininig 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. 90-2251 Filed 1-31-90; 8:45 am]

BILING CODE 6717-01-M

[Docket No. RP88-69-002]

Stingray Pipeline Co.; Notice of Filing

January 25, 1990.

Take notice that Stingray Pipeline Company (Stingray) on January 17, 1990 tendered for filing certain revised tariff sheets as listed in Appendix A to the filing in order to implement Stingray's rate case settlement as approved by the Federal Energy Regulatory Commission (Commission) on December 7, 1989 at Docket No. RP88-69-000.

Stingray states that copies of its filing have been served on all parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 1, 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. 90-2252 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-73-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 26, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 22, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Ninth Revised Sheet No. 76
Ninth Revised Sheet No. 77
Eighth Revised Sheet No. 78
Ninth Revised Sheet No. 79
Second Revised Sheet No. 483G
Second Revised Sheet No. 483H

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover a portion of the take-or-pay charges attributable to Sea Robin Pipeline Company's (Sea Robin) Docket No. RP89-141 billed to Texas Eastern by Texas Gas Transmission Corporation (Texas Gas) that are to be paid by Texas Gas to United Gas Pipe Line Company (United).

Texas Eastern states that Sea Robin filed tariff sheets on March 31, 1989 which were accepted by the Commission to be effective April 1, 1989 in Docket No. RP89-141-000. On November 6, 1989 United filed in Docket No. RP89-147 *et al.*, tariff sheets to recover its portion of Sea Robin's take-or-pay charges. On December 21, 1989 Texas Gas filed tariff sheets in Docket No. RP90-64-000 to recover take-or-pay costs billed to Texas Gas by United pursuant to Sea Robin's Docket No. RP89-141.

Texas Eastern states that pursuant to the allocation methodology proposed by Texas Gas to recover Sea Robin's take-or-pay costs billed Texas Gas by United, Texas Gas will bill and recover from Texas Eastern an aggregate principal amount of $207,223 by means of a monthly charge of $10,361, inclusive of amortization interest, for a period of 20 months effective January 1, 1990.

Texas Eastern states that Sheet Nos. 483G and 483H and Sheet Nos. 76 through 79 are being revised to incorporate the procedures pursuant to which Texas Eastern will recover take-or-pay charges attributable to the Texas Gas filing in Docket No. RP90-64. Sheet Nos. 483G and 483H provide for the recovery of take-or-pay charges billed to Texas Eastern by Texas Gas. Sheet Nos. 76 through 79 include the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Texas Gas' take-or-pay charges billed to Texas Eastern attributable to Sea Robin's Docket No. RP89-141. Workpapers setting forth Texas Eastern's determination of the allocation factor for the monthly principal amount and a breakdown of the monthly principal amounts (which include a predetermined carrying charge) each Texas Eastern customer will be required to pay are set forth under Appendix A of the filing.

The proposed effective date of the above tariff sheets is February 1, 1990.

Copies of the filing were served on Texas Eastern's 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 Agency Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 2, 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. 90-2253 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-3-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 26, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 22, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Proposed to be Effective May 1, 1989

Second Substitute Sixth Revised Sheet No. 72
Substitute Sixth Revised Sheet No. 73
Second Substitute Sixth Revised Sheet No. 74
Substitute Sixth Revised Sheet No. 75

Proposed to be Effective September 1, 1989

Substitute Seventh Revised Sheet No. 72
Substitute Seventh Revised Sheet No. 73
Substitute Seventh Revised Sheet No. 74
Substitute Seventh Revised Sheet No. 75

Proposed to be Effective October 16, 1989

Substitute Eighth Revised Sheet No. 72
Substitute Eighth Revised Sheet No. 73
Substitute Eighth Revised Sheet No. 75

Texas Eastern states that the purpose of this filing is to track modifications made by Texas Gas Transmission Corporation (Texas Gas) on December 14, 1989 in Docket No. RP90-58 to take-of-pay charges to be billed Texas Eastern.

Texas Eastern states that on December 14, 1989 Texas Gas filed an amendment to its Order No. 500 take-or-pay recovery filings made on March 31, 1989 and July 20, 1989 in Docket Nos. RP89-119 and RP89-208, respectively, in compliance with the Commission's December 7, 1989 order in Docket No. RP89-119-001. Texas Gas' December 14, 1989 filing reflected revised base and deficiency periods which resulted in revised fixed monthly take-or-pay charges for Texas Eastern. Texas Gas proposes to bill Texas Eastern a total principal amount of $1,517,922, exclusive of interest, effective May 1, 1989 and an additional amount of $21,278, exclusive of interest, effective Aguust 1, 1989.

Texas Eastern states that the tariff sheets proposed herein are being filed solely to track the amendment filed by Texas Gas on December 14, 1989 in Docket No. RP90-58-000. Sheet Nos. 72 through 75 set forth the revised principal amount plus the revised allocation factor for carrying costs that each Texas Eastern customer will be required to pay in order to recover the charges in Docket Nos. RP89-119 and RP89-208 billed to Texas Eastern by Texas Gas. Workpapers setting forth the allocation factor and monthly amounts each customer will be required to pay effective May 1, 1989 and September 1, 1989 are set forth under Appendices A and B of the filing.

Texas Eastern states that the tariff sheets proposed to be effective May 1, 1989 replace tariff sheets filed on April 21, 1989 in Docket No. RP89-150 which were approved by the Commission in an order dated May 19, 1989. The tariff sheets proposed to be effective September 1, 1989 replace tariff sheets filed on August 31, 1989 in Docket No. TM89-11-17-000 which were approved by the Commission in an order dated September 29, 1989. The tariff sheets proposed to be effective October 16, 1989 replace tariff sheets filed on October 31, 1989 in Docket No. RP90-30 which were approved by the Commission in an order dated November 30, 1989.

The proposed effective dates of the above tariff sheets are as stated above.

Copies of the filing were served on Texas Eastern's 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 2, 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 filed 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. 90-2254 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-140-008 and RP89-195-005]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 25, 1990

Take notice that Williams National Gas Company (WNG) on January 18, 1990, tendered for filing First Revised Second Revised Sheet No. 150 and First Revised Fourth Revised Sheet No. 309 to its FERC Gas Tariff, Original Volume No. 2.

WNG states that the purpose of this filing is to conform these tariff sheets to include the TOP Volumetric Surcharge as approved in the above referenced dockets. WNG filed tariff sheet Nos. 150 and 309 to be effective June 1, 1989 to institute thermal billing, but since the TOP Volumetric Surcharge was not then approved, WNG did not include language to collect the TOP Volumetric Surcharge in the June 1, 1989 sheets. The instant filing provides tariff sheet Nos. 150 and 309 to be effective June 1, 1989 which reflect both the change to thermal billing and the TOP Volumetric Surcharge.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before February 1, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-2255 Filed 1-31-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of October 9 Through October 13, 1989

During the week of October 9 through October 13, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

M.A. Malik, 10/10/89; KFA-0316

M.A. Malik filed an Appeal from a determination in which the DOE's Oak Ridge Office responded to a request which Malik had submitted under the Freedom of Information Act. In considering the Appeal, the Office of Hearings and Appeals determined that it did not have jurisdiction to consider whether Malik was being overcharged for reproduction of the items he requested and that an adequate search for the items had been conducted.

Refund Applications

Associated Milk Producers, 10/13/89; RF272-4734

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Associated Milk Producers, Inc. (AMPI) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. AMPI used the petroleum products in the course of its normal business activities as a processor and marketer of dairy products. AMPI was an end-user of refined petroleum products, and was therefore presumed injured by the DOE. A consortium of 30 states and 2 territories (the States) filed objections to AMPI's Application. In its submission, the States attempted to rebut the end-user presumption of injury. The DOE determined that the presumption was applicable to AMPI, and that a refund of $40,994 should be granted.

Atlantic Richfield Co. Estate of L.E. Tucker, et al., 10/13/89; RF304-7408, et al.

The DOE issued a Decision and Order approving 59 Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Fifty-five of the applications were granted under the small claims injury presumption. The four remaining applications were filed by mid-level resellers and retailers that elected to limit their refund to 41% of the volumetric amount. The refunds granted totalled $159,888, including $39,523 in accrued interest.

Atlantic Richfield Co. Juall Arco, et al., 10/13/89; RF304-4629, et al.

The DOE issued a Decision and Order concerning 50 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or resellar/retailers requesting refunds of less than $5,000. Therefore, each applicant was presumed injured. The refunds granted totalled $68,018, including $16,818 in accrued interest.

Atlantic Richfield Co. Township of Lawrence, et al., 10/13/89; RF304-5060, et al.

The DOE issued a Decision and Order concerning 29 Applications for Refund filed by twelve claimants in the Altantic Richfield Company special refund proceeding. All of the applicants were either end-users or reseller/retailers that applied for small claims. In addition, each applicant documented the volume of its purchases from ARCO, and therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should received refunds totalling $26,618, including $6,582 in accrued interest.

Crown Central Petroleum Corp., Power Test Petroleum Distributors, Inc., Supreme Petroleum Co., of N.J., Inc., Chester Lane Crown Service, 10/13/89; RF313-218, RF313-223, RF313-309

The DOE issued a Decision and Order considering applications filed by three purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. Each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The refund applications were granted using a presumption of injury procedure set forth in Crown Central Petroleum Corp., 18 DOE ¶ 85,326 (1988). The total amount of the refunds approved in this Decision was $35,746, including $5,932 in accrued interest.

Exxon Corp., Concrete Structures of Maryland, Inc., et al., 10/10/89, RF305–2151, et al.

The DOE issued a Decision and Order concerning 40 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than $5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $32,471, including $5,997 in accrued interest.

Exxon Corp., Fort Davis Exxon, 10/13/89, RF307–10068

The DOE issued a Decision and Order concerning an Application for Refund filed in the Exxon Corporation special refund proceeding by Prabhjot Paul Singh. Mr. Singh claimed that he was eligible for a refund based upon purchases from Exxon made during the Exxon consent order period by Gouldin Exxon Station, a retail outlet which he purchased in 1982 and renamed Fort Davis Exxon. Upon examining the Bill of Sale by which Mr. Singh purchased Gouldin Exxon Station, the DOE found that the right to a refund was not one of the assets transferred to Mr. Singh. In accordance with prior refund Decisions involving the transfer of ownership, the DOE therefore denied Mr. Singh's refund application.

Exxon Corp., Harris Exxon, et al., 10/13/89, RF307–7617, et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was an indirect purchaser of Exxon products and was supplied by a firm that either (i) did not apply for an Exxon refund, (ii) had been granted an Exxon refund under a presumption of injury, or (iii) indicated in its Exxon refund application that it did not intend to make a showing of injury. The claims of the applicants were therefore considered under the procedures used to evaluate direct purchase claims. Each applicant was a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $5,620, including $1,038 in accrued interest.

Exxon Corp., P.E.P., Inc., et al., 10/13/89, RF307–1299, et al.

The DOE issued a Decision and Order concerning 46 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was a retailer of Exxon products whose allocable share is less than $5,000 or an end-user. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $28,732, including $5,306 in accrued interest.

Exxon Corp., Wayne Oil Co., Inc., J & P Oil Co., Inc., Phil-Ett Oil Co., Inc., 10/13/89, RF300–7250, RF307–10066, RF307–10067

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding regarding Wayne Oil Co., Inc. (Wayne) and two of its subsidiaries, J & P Oil Co., Inc. (J & P) and Phil-Ett Oil Co., Inc. (Phil-Ett). In Exxon Corp./Jones Exxon, 19 DOE ¶ 85,364 (1989), J & P (Case No. RF307–7251) was granted a refund of $4,247, and Phil-Ett (Case No. RF307–7252) was granted a refund of $5,293 based on their purchases of Exxon petroleum products. However, because the three firms are affiliated, the refunds granted to J & P and Phil-Ett were rescinded, and a refund of $7,379, including $1,403 in accrued interest, was granted to Wayne and its subsidiaries under one presumption of injury.

Fennimore Co-Op Oil Company, Inc. et al., 10/13/89; RF272–71156 et al.

The DOE issued a Decision and Order granting seven Applications for Refund filed in the Subpart V crude oil refund proceeding. The applicants are agricultural cooperatives, which requested refunds based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim by using a reasonable estimate of its purchases. Generally, we grant refunds to a cooperative based on volumes resold to its members, on the condition that the cooperative certify that it will pass through any refunds received to those members. As the seven cooperatives considered in this Decision furnished such certification, each was granted a refund. The total refund granted is $97,257.

Granite Construction Co., 10/13/89; RF272–6686, RD272–6686

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Granite Construction Company based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed a pleading objecting to and commenting on the application. The States submitted a letter from the Vice-President of Granite confirming that Granite had been reimbursed by its clients for a portion of its fuel costs. The States also submitted an affidavit by an economist stating that the construction industry was able to pass through some costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. However, Granite was determined to be ineligible for refunds based on the volumes for which the firm was reimbursed. In addition, the DOE denied a Motion for Discovery which the States filed. The refund granted in this Decision is $115,219.

Gulf Oil Corp., Att-Bo Enterprises, Inc., Detroit Automatic Car Wash, Inc., 10/13/89; RF300–7243, RF300–7244

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Because the firms were under common ownership during the consent order period, and because their combined allocable share exceeds $5,000, the DOE consolidated these Applications when applying the presumptions of injury. The total refund granted in this Decision, including accrued interest, is $6,719.

Gulf Oil Corp./Dale Childers, Arkansas Gulf; Cain's Gulf Service, 10/12/89; RF300–6613, RF300–6615

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Federal Refunds, Inc. (FRI) on behalf of resellers of Gulf products. Each of the applicants was seeking a refund of less than $5,000 and each was therefore able to receive a refund based on its full allocable share under the small claims presumption without showing injury. The DOE contacted the respective owners of Childers and Cain's directly to request that the applicants submit proof of ownership of their gasoline stations. For the reasons stated in Gulf Oil Corporation/LeBlanc's Gulf Service, 18 DOE ¶ 85,876 (1989), the DOE ordered that the refund checks be sent directly to the applicants, rather than to FRI. The sum of the refunds granted in this Decision is $2,962, including $757 in accrued interest.

Gulf Oil Corp./Hanson Oil Co., George R. Williamson, 10/12/89; RF300–5040, RF300–5225

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Hanson Oil Company and George R. Williamson, both of which were consignees and resellers of Gulf refined products. The refunds were granted utilizing the appropriate presumptions of injury. The sum of the refunds granted in this Decision, including both principal and interest, is $5,588.

Gulf Oil Corp./HPI Industries, Inc., 10/11/89; RF300–8317

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by HPI Industries, Inc. HPI applied for a refund for its purchases of styrene, a product which was not controlled under the DOE's price regulations. Accordingly, the DOE denied HPI's Application.

Gulf Oil Corp./Huntley Oil Company, Inc., 10/13/89; RF300–5482

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $6,719, including $1,719 in accrued interest.

Gulf Oil Corp./J.W. Homes, 10/10/89; RF300–10052, RF300–10069

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by J.W. Holmes. Because the two firms operated by Mr. Holmes were under common ownership during the consent order period, and because their allocable share exceeds $5,000, it is appropriate to consider them together when applying the presumptions of injury. Mr. Holmes collectively purchased 12,133,169 gallons of covered Gulf products, and his applications were approved under the 40 percent presumption of injury. Since $5,000 excees 40 percent of Mr. Holmes' allocable share, the refund granted in this Decision is $6,719, including $1,719 in accrued interest.

Gulf Oil Corp./Newcomb Oil Co., 10/12/89; RF300–5490

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Newcomb Oil Company, a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision is $15,667, including $4,008 in accrued interest.

Gulf Oil Corp./Oasis Petroleum Co., 10/11/89; RF300–5370

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision is $7,417, including $1,897 in accrued interest.

Gulf Oil Corp./Paul Collum, W.L. Anderson, Lee Oil Co., 10/10/89; RF300–304, RF300–403, RF300–492

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by claimants who were both consignees and resellers during the consent order period. The applications were approved under the small claims and 10 percent presumptions of injury. The sum of the refunds granted is $7,691.

Gulf Oil Corp./Wayland Oil Co., Inc., 10/10/89; RF300–5043

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Wayland Oil Company, Inc., a consignee and reseller of Gulf refined products. The applicant's refund was granted utilizing the appropriate presumptions of injury. The total refund granted in this Decision is $7,407, including $1,894 in accrued interest.

Shell Oil Co./Hott's Shell Service, et al., 10/11/89; RF315–4609, et al.

The DOE issued a Decision and Order granting 83 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $71,489, including $12,055 in accrued interest.

Shell Oil Co./John Felte, et al., 10/10/89; RF315–5905, et al.

The DOE issued a Decision and Order grant-43 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $38,213, including $6,443 in accrued interest.

Shell Oil Co./Joseph P. Klaus, et al., 10/12/89; RF315–5404, et al.

The DOE issued a Decision and Order grant-165 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $159,652, including $26,915 in accrued interest.

Shell Oil Co./Leslie B. Dunn, et al., 10/13/89; RF315–4000, et al.

The DOE issued a Decision and Order granting 126 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller who allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision is $104,674, including $17,649 in accrued interest.

Standard Oil Co. (Indiana)/New York, 10/13/89; RQ251–536

The DOE issued a Decision and Order granting the second-stage refund application filed by the State of New York in the Standard Oil Co. (Indiana) special refund proceeding. New York requested a total of $1,021,801 for three programs. The first program introduces a current conservation technology to building professionals and encourages them to employ energy-efficient technology in residential construction. Similarly, the second program educates small businesses about energy conservation. The third program provides energy conservation directly to consumers via brochures, conferences, and a toll-free Energy Hotline. The DOE found that these programs would provide restitution to injured petroleum consumers by reducing their residential and commercial heating costs and providing them with reliable energy information.

Vickers Energy Corp./Oklahoma, 10/13/89; RQ1-530

The DOE issued a Decision and Order partially approving a second-stage refund application filed by the State of Oklahoma in the Vickers Energy Corp. special refund proceeding. The State requested $515,000 of its Vickers funds for two programs, Oklahoma Energy Education and the Group Homes Energy Conservation Project. The DOE determined that the Group Homes Energy Conservation Project, a program to weatherize group homes for the mentally retarded for which the State requested $500,000, was restitutionary in nature and approved it. The DOE, however, could not approve Oklahoma's request for $15,000 for Oklahoma Energy Education Day. The primary beneficiaries of this program would be Oklahoma school children who were not consumers of petroleum products during 1973-1981 and were therefore not injured by oil overcharges. Accordingly, the DOE disbursed a total of $500,000, including $253,920 in accrued interest, to the State of Oklahoma.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of applicants	Total refund
Liberty Polymers, et al	RF272-09387	10/11/89	14	$21,698

Dismissals

The following submissions were dismissed:

Name	Case No.
Anderson Super Gulf *et al*	RF300-6628
Bunge Corporation	RF315-3904
Cross Road Shell	RF315-3926
Cutman's ARCO	RF304-6283
D. L. Bartone Oil Co., Inc	RF304-9301
Farris Self Service Station	RF315-305
Ferguson Service Station	RF300-6627
John's Service	RF310-154
Jones Oil, Inc	RF313-198
Joseph Dmit	RF315-280
P & R Oil Co	RF304-4481
Pure Energy, Inc	RF304-9052
S. B. Collins, Inc	RF300-5008
Smitty's Arco	RF304-4232
Tom's Exxon	RF315-984
The Muffler Shoppe	RF300-6618
Walnut Hill Ent., Inc	RF315-3650
Walter King	RF315-360

Case No.	Applicant/contact	Location
RF300-06628	Anderson Super Gulf, Herbert L. Tanner	220 South Main, Lawrenceburg, KY 40342
RF300-07019	Morris Oil Co., Herbert L. Tanner	P.O. Box 368, Senatobia, MS 38668
RF300-07304	Bailey Station Gulf, Herbert L. Tanner	10022 Poplar, Collierville, TN 38017
RF300-07377	Birdio Grocery, Herbert L. Tanner	1499 Birdio Rd., Lawrenceburg, KY 40342
RF300-07666	Lampacks Tire Service, Herbert L. Tanner	275 Broadway, Newburen, NY 12550
RF300-07667	Vince Tire Service, Herbert L. Tanner	2007 N. Delsea Drive, Millville, NJ 08332
RF300-07673	Bell Truck Line, Herbert L. Tanner	Rt. 1 Box 310, Jackson, NC 27831
RF300-07683	Russell Oil Co., Herbert L. Tanner	820 Young St., Richmond, VA 23222
RF300-07689	Wilson Lime, Herbert L. Tanner	709 S. Somerville St., Somerville, TN 38068
RF300-07984	Crockett Gulf, c/o Herbert L. Tanner	301 Vernon St., La Grange, GA 30240
RF300-08454	Universal Motors, Herbert L. Tanner	2971 River Ave., Camden, NJ 08105
RF300-08503	Geo. L. Ralph Inc., Herbert L. Tanner	P.O. Box 1544, Salisbury, MD 21801
RF300-08507	Don Garage, Herbert L. Tanner	Box 23, Van Hornesville, NY 13475
RF300-08508	Doyle Coons Oil Co., Herbert L. Tanner	Myrtle Ave. Rd. 1-Box 57, Pine Plains, NY 12567
RF300-08514	Eastbrook Automotive, Herbert L. Tanner	250 Hope St., Stamford, CT 06906
RF300-08524	Artie Service Center, Herbert L. Tanner	Robinson Ave., Wappingers Falls, NY 12590
RF300-08908	Canada Gulf Service Center, Herbert L. Tanner	Box 38, Menlo, GA 30731
RF300-09242	Geo. L. Ralph Inc., Herbert L. Tanner	Box 1544, Salisbury, MD 21801
RF300-09263	Dick's Trucking, Inc., c/o Herbert L. Tanner	3611 N.W. 124th Ave., Coral Springs, FL 33065
RF300-09296	Dick's Trucking Inc., Herbert L. Tanner	3611 North West 124th Ave., Coral Springs, FL 33065
RF300-09867	Chapparal Truck Stop, Herbert L. Tanner	P.O. Box 784, Sandia Park, NM 87047
RF300-09930	Roys Lawn & Home Care Inc., Herbert L. Tanner	1730 S. 6th Lincoln, NE 68502
RF300-09931	Turner Fuel Oil, Herbert L. Tanner	35329 Thomas St., Jacksonville, FL 32205
RF300-09967	Fastop Foods of E. Texas, Herbert L. Tanner	3212 Stone Road, Kilgore, TX 75662
RF300-09969	Fastop Foods of E. Texas, Herbert L. Tanner	2512 N. Hwy. 259, Kilgore, TX 75662

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 25, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-2355 Filed 1-31-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3719-2]

Resource Conservation and Recovery Act; RCRA Docket Information Center: Closing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of closing of RCRA Docket.

SUMMARY: The Resource Conservation and Recovery Act Docket will be closed from February 5, 1990 through February 9, 1990 for the installation of new cabinets. Closing the Docket during the installation of the new furniture will facilitate the organization of the Docket's collections and ensure the integrity of the regulatory dockets. The new cabinets will increase filing capacity in the Docket allowing the Docket to provide improved service to its patrons.

As of January 25, 1990, we identified that the following Resource Conservation and Recovery Act action will be undergoing the public comment period during the time of the Docket's closing:

FR Number	Docket ID No.	Title	Closure date
55FR2248	F-90-HBEP-FFFFF.	Proposed Exclusion (Hoescht Celanese Corporation).	03/09/90

The RCRA Docket staff will receive written comments during this time; however, the docket will not be available for viewing.

FOR FURTHER INFORMATION CONTACT: RCRA Docket Information Center (OS-305), 401 M Street, S.W., Washington, DC 20460.

Dated: January 25, 1990.

Sylvia K. Lowrance, *Director, Office of Solid Waste.*

[FR Doc. 90-2357 Filed 1-31-90; 8:45 am]

BILLING CODE 6560-50-M

TSCA Chemical Testing; Receipt of Test Data

[OPTS-44546; FRL 3707-8]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione (CAS No. 118-75-2), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Data was also received on octamethylcyclotetrasiloxane (Cas No. 556-67-2), submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 2,3,5,6-tetrachloro-2,5-cyclohexadiene1,4-dione was submitted by Sandoz Chemicals pursuant to a test rule at 40 CFR 766.35 and received by EPA on January 3, 1990. The submission describes the analysis of samples for the presence of polychlorinated dibenzo-p-dioxins and dibenzofurans by high-resolution gas chromatography/high resolution mass spectrometry. These tests are required by this test rule.

Test Data for OMCTS was submitted by the Silicones Health Council, on behalf of the SHC members that sponsored the study and pursuant to a consent order at 40 CFR 799.5000, and received by EPA on January 5, 1990. The submission describes the acute toxicity of OMCTS to rainbow trout. Acute toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44546)

This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: January 25, 1990.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Pesticides and Toxic Substances.

[FR Doc. 90-2359 Filed 01-31-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL RESERVE SYSTEM

Arthur Temple; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 89-30192) published at page 53751 of the issue for Friday, December 29, 1989.

Under the Federal Reserve Bank of Dallas, the entry for Arthur Temple is amended to read as follows:

1. *Arthur Temple,* Diboll, Texas; to acquire an additional 13.1 percent of the voting shares of Diboll State Bancshares, Inc., Diboll, Texas, for a total of 22.9 percent, and thereby indirectly acquire Diboll State Bank, Diboll, Texas, and thereby indirectly acquire Peoples National Bank, Lufkin, Texas.

2. *Arthur Temple,* Diboll, Texas; to acquire 21.4 percent of the voting shares of First Community Financial Corporation, Lufkin, Texas, and thereby indirectly acquire Community State Bank, Lufkin, Texas.

3. *Arthur Temple,* Diboll, Texas; to acquire an additional 13.1 percent of the voting shares of Pineland Bancshares, Inc., Pineland, Texas, for a total of 22.9 percent, and thereby indirectly acquire Pineland State Bank, Pineland, Texas.

Comments on this application must be received by February 15, 1990.

Board of Governors of the Federal Reserve System, January 26, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-2282 Filed 1-31-90; 8:45 am]

BILLING CODE 6210-01-M

Vandalia National Corp., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal

Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 21, 1990.

A. Federal Reserve Bank of Richmond (Fred L. Bagwell, Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Vandalia National Corporation*, Morgantown, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of West Virginia, Morgantown, West Virginia, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 26, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-2284 Filed 1-31-90; 8:45 am]

BILLING CODE 6210-01-M

Cecil Dudley Walker; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 15, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street NW., Atlanta, Georgia 30303:

1. *Cecil Dudley Walker*, Baileyton, Alabama; to acquire 14.8 percent of the voting shares of Cullman BancShares, Inc., Cullman, Alabama, and thereby indirectly acquire Peoples Bank of Cullman, Cullman, Alabama.

Board of Governors of the Federal Reserve System, January 26, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-2283 Filed 1-31-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Integration of Health and Mental Health Care Worker Training in HIV Infection and Aids

Institute: National Institute of Mental Health, ADAMHA, HHS.

Action: Notice of request for applications.

Background

The Department of Health and Human Services has identified Acquired Immunodeficiency Syndrome (AIDS) as the foremost public health problem in the United States. AIDS is a fatal illness characterized by a defect in natural immunity against disease. Many individuals who are known to be infected with Human Immunodeficiency Virus (HIV) do not have symptoms or the defining characteristics of AIDS. Infected persons appear to be capable of transmitting infection indefinitely, even if they remain asymptomatic.

Research and clinical experience have yielded increasing evidence that HIV infects the brain, resulting in central nervous system impairment and neuropsychiatric complications, including AIDS Dementia Complex. In addition to neuropsychologic and neuropsychiatric consequences, individuals with HIV infection and AIDS, as well as persons at high risk for infection and significant others of HIV-positive persons, have a range of psychosocial needs and may need help in coping with the psychological consequences of the HIV epidemic. Also, information and assistance are needed to change high-risk behavior or to maintain low-risk activities. Since Blacks and Hispanics are disproportionately represented among AIDS cases, special attention is needed to focus on culture-specific needs of these populations related to HIV infection and AIDS.

Since 1986, the National Institute of Mental Health (NIMH) has provided support for a program to develop model educational approaches to train health care providers in the neuropsychiatric and psychosocial aspects of HIV infection and AIDS. Trainees include medical students, primary care residents, other health care workers, psychiatry residents, nurses, social workers, counselors, psychologists, staff physicians, clergy, and police. The Health Resources and Services Administration (HRSA) also supports programs to train primary care providers on aspects of the care of AIDS patients and HIV-infected individuals. The HRSA program supports 15 Regional Education and Training Centers (ETCs), each of which is responsible for a geographic area. The HRSA programs provide consultation to health care personnel in the areas of counseling, diagnosis, and management of HIV-infected individuals and AIDS patients. The ETCs train community primary care providers to incorporate strategies for HIV prevention into their clinical priorities; individuals to serve as AIDS educators for health care personnel in their local area; and health care professionals to provide sensitive and holistic care of AIDS patients.

NIMH is interested in incorporating training on the mental health aspects of HIV infection and AIDS into ongoing AIDS health training so that comprehensive biopsychosocial AIDS training can be provided to the Nation's health and mental health care providers. This announcement is a minor revision of MH 89-19, "Expansion of Grants to Support Health Resources and Services Administration Supported Education and Training Centers to Include Training on Mental Health Aspects of AIDS."

Eligibility Requirements

Eligible applicants include currently funded HRSA ETCs, currently or formerly NIMH funded AIDS training for health care worker contractors, mental health professional entities, and other organizations demonstrating specialized mental health expertise in key project staff. To be eligible, applicants must be HRSA ETCs or must link with existing ETCs to apply. Linking means establishment of a formal collaborative relationship that facilitates a plan to integrate AIDS mental health training into ongoing health care worker training. Eligibility is restricted in this way because of the program goal to incorporate AIDS mental health training into ongoing health care worker training conducted by ETCs. ETC applicants are strongly encouraged to use in their proposals the expertise of current and former NIMN AIDS training contractors in their regions. Women and minority

principal investigators are encouraged to apply.

Availability of Funds

A total of $1.2 million is available in fiscal year 1990 to support grants under this RFA. An estimated three-four new grants will be awarded in fiscal year 1990.

Program Goals/Application Requirements

The purpose of this program is to enhance the Nation's AIDS training capability through the integration of health care worker training with mental health (*e.g.*, neuropsychiatric and psychosocial) aspects of AIDS. All applicants will be expected to work with and build on existing ETC programs in their regions and to propose comprehensive training programs that deal with coping with HIV infection and AIDS: approaches to prevent the spread of HIV infection; and training to recognize and treat neuropsychiatric aspects of HIV infection and AIDS.

The following items should be addressed in the application:

Approach, Methods, and Training Plans

- A complete description of the approach and methods by which the program will accomplish the objectives, including types and numbers of individuals to be trained, proposed training sites, and proposed training tools, and evidence that the grantee will establish necessary relationships with the target institutions and groups to ensure implementation of the proposed program
- A plan to incorporate into the curriculum emerging research knowledge of neuropsychiatric and psychosocial aspects of AIDS
- A plan to train providers on aspects of the needs of individuals at risk, including gay/bisexual men, minority persons, intravenous drug abusers, women, infants, children, adolescents, and sex partners of HIV-infected individuals
- Training to recognize, treat, or refer individuals with the psychiatric and neuropsychiatric complications of HIV infection and their clinical manifestation such as delirium, dementia, organic mood disorder, depression, and adjustment disorders
- A specific plan to train providers in prevention strategies and risk reduction to reduce the transmission of HIV infection in all populations
- Training for providers on counseling pre- and post-HIV antibody testing
- A plan to train health and mental health professionals and personnel who serve the mentally ill, both in inpatient and community settings
- A plan to train providers in the culture-specific needs and issues for ethnic minority groups
- A plan to recruit individuals from minority populations as trainers and trainees
- A plan to recruit minority populations

Integration of Mental Health and Health Training

- Evidence of collaboration with relevant community-based AIDS organizations, medical and health professional schools, mental health professional organizations, hospitals, and other health professional organizations
- A specific plan of how the applicant will integrate AIDS mental health training with health training
- An integrated biopsychosocial approach to understanding AIDS

Mental Health Expertise

- Mental health AIDS expertise demonstrated by key staff trained in the core mental health disciplines (psychiatry, psychology, social work, nursing) and experienced with HIV infection and AIDS
- A specific plan to include mental health professionals as well as general health care professionals in the training program

Evaluation

- A specific plan to evaluate the efficiency and effectiveness of the proposed program, including data on most effective training techniques, and knowledge and behavior outcomes for the trainees
- Plan to evaluate outcomes such as clinical skills, attitudes, and knowledge about preventing HIV infection and working with HIV-infected individuals.

The applicant should include a plan to train at least 1,000 health and mental health care providers and trainees for each of the 3 years of the grant.

The applicant should demonstrate specialized mental health expertise, either within its own organization (*e.g.*, a department in an academic institution, mental health professional organization, or other specialty mental health organization) or through explicit collaboration for this project with an organization demonstrating specialized mental health expertise. Letters of agreement must be included with the application.

The application should request funds to attend two meetings each year with other grantees performing similar tasks at other locations within the United States. Each application, therefore, should include funds for members of the applicant organization to make a total of four annual trips (two people each at two meetings) to a grantee site or to Rockville, Maryland, to be determined by NIMH program staff. These meetings will provide an opportunity for grantees to present their various training programs, discuss the program effectiveness, and exchange ideas and information for improving training efforts.

Terms and Conditions of Support

Support may be requested for up to 3 years. Grants will be administered in accordance with the PHS Grants Policy Statement and applicable program regulations. Grantees funded under MH 89–19, "Expansion of Grants to Support Health Resources and Services Administration Sponsored Education and Training Centers to Include Training on the Mental Health Aspects of AIDS" are eligible to apply for supplemental funds. A completing supplemental application may be submitted during an approved period of support to expand the scope or protocol of a project during the approved period.

Direct Costs

Grants described in this RFA are awarded directly to eligible applicants. Funds may be used only for those expenses which are directly related and necessary to carry out the project and must be expended in conformance with DHHS cost principles and the Public Health Service Grants Policy Statement.[1]

All budget items must be fully justified at the level requested. Grantees are expected to be familiar with and comply with applicable cost policies.

Teaching (Nontrainee Costs)

Direct cost items are allowable for teaching costs associated with this program. These include personnel, consultants, supplies, travel, reproduction and printing costs, rental equipment, minor equipment items, and other items which are directly related to the proposed training program and are otherwise unavailable from the institution. Budgets should include expenses for the two meetings per year which project staff attend.

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[1] Public Health Service Grants Policy Statement, DHHS Publication (rev.) January 1, 1987, available for $4.50 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. When ordering copies, the GPO stock number, GPO 017–020–00092–7 should be referenced.

Indirect Costs

Indirect costs under these training grants, other than those awarded to State or local government agencies, will be reimbursed at eight percent of total allowable direct costs or at the actual indirect cost rate, whichever results in a lesser dollar amount.

Trainee Stipends

There will be no stipends associated with this initiative.

Application Procedures

Prospective applicants are encouraged to consult NIMH staff concerning eligibility and for assistance in developing applications. Staff consultation is available from:

Melvyn R. Haas, M.D., Chief, Psychiatry Education Program, Division of Education and Service Systems Liaison, Parklawn Building, Room 7C–02, Telephone: (301) 443–2120

Information on NIMH AIDS Programs may be obtained from:

Ellen Stover, Ph.D., Director, Office of AIDS Programs, Parklawn Building, Room 17C–04, Telephone: (301) 443–7281

The mailing address for both of the above is:

National Institute of Mental Health, 5600 Fishers Lane, Rockville, Maryland 20857

Applications must be complete and contain all information needed for initial and Advisory Council Review. No addenda will be accepted later, unless specifically requested by the Executive Secretary of the initial review group.

The narrative section of the application (sections A–D) may not exceed 20 pages. Appendices may not be used to expand the narrative section. Applications exceeding this limitation will be returned. The applicant should include a project abstract which should not exceed the space provided.

Applicants will be responsible for submitting a signed original grant application form, PHS 398 (Rev. 10/88) and 23 legible copies to:

AIDS Coordinator, Division of Research Grants, National Institutes of Health, Westwood Building, Room 9, 5333 Westbard Avenue, Room 240, Bethesda, Maryland 20892

Applicants are requested to indicate "AIDS Mental Health Training (MH–90–04)" in Block 2 of the PHS 398 and on the container used to mail the applica;tion.

Application kits containing the necessary forms may be obtained from business office or offices of sponsored research at most universities, colleges, medical school, and other major research facilities. If such a source is not available, the following office may be contacted for the necessary application material:

Grants Management Branch, National Institute of Mental Health, 5600 Fishers Lane, Room 7C–05, Rockville, Maryland 20857, Telephone: (301) 443–4414

Review of Applications [2]

Applications will be reviewed for scientific and technical merit by an initial review group (IRG) composed primarily of non-Federal scientific experts. Final review is by the National Advisory Mental Health Council; review by Council may be based on policy considerations as well as scientific merit. By law, only applications recommended for approval by the Council may be considered for funding. Summaries of IRG recommendations are sent to applicants as soon as possible following completion of the IRG review.

Review Criteria

Each grant application is evaluated on its own merits. The following criteria will be used in the initial review:

- The degree to which the program addresses and offers creative solutions to the training of health care providers to address HIV spectrum infection, with particular attention to special populations
- Clarity of the goals of the proposed training program and their adherence to the purposes of this announcement
- Clarity, creativity, and comprehensiveness of plans for integrating health and mental health AIDS training
- Mental health AIDS qualifications and expertise in project staff for proposed areas of work
- Plans for the integration and dissemination of knowledge gained from relevant research material and clinical experience
- Degree to which program recruits minority trainers and trainees and addresses specific issues of minority populations
- Suitability of the facilities and the environment for carrying out the proposed activities
- Appropriateness and quality of the plans for evaluating outcomes of the proposed project

[2] Applications submitted in response to this RFA are not subject to intergovernmental review requirements of Executive Order 12372 as implemented through HHS regulations at 45 CFR part 100, and are not subject to Health Systems Agency review.

RECEIPT AND REVIEW SCHEDULE

Receipt of application	Initial review	National Advisory Mental Health Council Review	Earliest start date
April 25, 1990. Late submissions will not be accepted.	June/July 1990.	Sept 1990	Sept 30, 1990

Award Criteria

The responsibility for award decisions on applications recommended by the National Advisory Mental Health Council lies solely with NIMH staff. The following criteria will be used in making award decisions:

- Quality of the proposed project as determined during the review
- Evidence of mental health expertise in leadership positions
- Comprehensiveness and feasibility of plan to integrate mental health and health care worker training
- Innovative nature of the program
- Geographical balance

The Catalog of Federal Domestic Assistance number for this program is 13.244. These grants will be made under the authority of section 303, Public Health Service Act (42 U.S.C. 242a) and regulations at 42 CFR part 64.

Joseph R. Leone,

Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–2286 Filed 1–31–90; 8:45 am]

BILLING CODE 4160–20–M

Technical Assistance Workshops in March

OFFICE: Office for Substance Abuse Prevention, ADAMHA, HHS.

ACTION: Notice of technical assistance workshops.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming three (3) regional technical assistance workshops to assist prospective applicants in responding to the Office for Substance Abuse Prevention's following grant announcements: High Risk Youth Demonstration Grants; Model Projects for Pregnant and Postpartum Women and Their Infants; and Substance Abuse Conference Grants. Applications for these continuing grant programs will be received on April 15, 1990 and on future dates to be announced.

Region/Date/Location

Northwest Region

March 6/7, 1990—Seattle Sheraton Hotel and Towers, 1400 Sixth Avenue, Seattle, WA 98101, (206) 621–9000

Central Region

March 8/9—The Westin Hotel, 1672 Lawrence Street, Denver, CO 80202, (303) 572–9100

Southeast Region

March 12/13, 1990—Sheraton Orlando North Hotel and Towers, I–4 & Maitland Boulevard, Orlando, FL 32853–8800, (407) 660–9000

Time: Each workshop will begin on Day 1 at 1:00 p.m. and will end on Day 2 at 1:00 p.m.

Agenda Highlights include:

Day 1—
Overview of the Three Grant Announcements
Grant Submission/Review/Award Process
General Principles of Prevention/Early Intervention
Lessons Learned about High Risk Youth and Resiliency Factors
Day 2—
Technical/Practical Aspects of Grant Application Process including: completing forms, program narrative, budget justification, approach, method, management, and evaluation

Status of Workshops: Open to prospective OSAP grant applicants.

To receive a workshop registration form contact: National Clearinghouse for Alcohol and Drug Information (NCADI), PO Box 2345, Rockville, MD 20852, Telephone: (301) 468–2600

For further details on the technical assistance workshops contact:

The Circle, Inc./CPMG, 8201 Greensboro Dr., Suite 600, McLean, VA 22102, (703) 821–8955

Purpose: In collaboration with the State Alcohol and Drug Authorities, the Office for Substance Abuse Prevention, Division of Demonstrations and Evaluation and the Office of the Director, will provide general assistance through these workshops to prospective applicants in responding to the OSAP grant announcements.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90–2287 Filed 1–31–90; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Reentry Into Areas Contaminated or Potentially Contaminated by Agents GA, GB, VX, Mustard, or Lewisite; Meeting

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Reentry into Areas Contaminated or Potentially Contaminated by Agents GA, GB, VX, Mustard, or Lewisite.

Place: Travelodge Hotel, 2061 North Druid Hills Road, NE., Atlanta, GA 30329.

Time and Date: 8:30 a.m.–5 p.m.—March 5–6, 1990.

Status: Open.

Matters To Be Discussed: At this meeting, issues related to reentry by civilians into areas that might become contaminated by lethal chemical agents will be discussed. These agents are GA (CAS 77–81–6), GB (CAS 107–44–8), VX (CAS 50782–69–9), sulfur mustard (CAS 505–60–2), or Lewisite (dichloro(2-chlorovinyl)arsine, CAS 541–25–3). The area might become contaminated in the unlikely event of a catastrophic release from a storage or demilitarization facility. The meeting is part of an effort to improve planning for emergencies near depots where lethal chemical agents are stored and where they will be destroyed during the Chemical Stockpile Disposal Program.

The meeting will be open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Contact Person for More Information: Additional information concerning the meeting may be obtained from Linda Anderson, Chief, Special Programs Group, CEHIC, mail stop (F29), CDC, 1600 Clifton Road, NE., Atlanta, GA 30333. Telephones: FTS 236–4595; Commercial: (404) 488–4595.

Dated: January 26, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–2292 Filed 1–31–90; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), **Federal Register**, Vol. 52, No. 224, pp. 44638–44640, dated Friday, November 20, 1987) is amended to include revised organization titles and functional statements for components in the Bureau of Quality Control (BQC), Office of the Associate Administrator for Operations. The functional statements for the Division of Financial Management and the Division of Program Performance in the Office of Medicaid Management (OMM) are being revised. The revisions are necessary because of the transfer of the Medicaid utilization control (UC) function from BQC to the Health Standards and Quality Bureau and other minor functional realignments within OMM. The title of the Division of Institutional Reimbursement Assessment in the Office of Quality Control Programs will be changed to the Division of Institutional Payment Oversight, and the functional statement will be revised by replacing the term "reimbursement" with "payment" wherever it appears in the statement. The changes are being made so that the organizational title and functional statement will more accurately describe the functional responsibilities of the division.

The specific changes to part F are described below:

• Section FP.10.B.3., Office of Quality Control Programs (FPC5), is amended by deleting the existing division titles and replacing them with the following:

a. Division of Operational Reviews (FPC51)

b. Division of Institutional Payment Oversight (FPC52)

c. Division of Performance Evaluation (FPC53)

• Section FP.20.B.2.a., Division of Financial Management (FPC41), is amended by deleting the existing functional statement and replacing it with the following:

a. Division of Financial Management (FPC41)

Establishes policies and procedures by which Medicaid State agencies and regional offices (ROs) submit quarterly budget estimates and expenditure reports. Analyzes budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Reviews all State claims for Federal reimbursement under title XIX of the Social Security Act. Reviews quarterly State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Reviews and approves RO disallowances of State claims for Medicaid reimbursement. Serves as the focal point for defense of disallowance decisions before the Grant Appeals Board (GAB). Sets and interprets fiscal requirements and procedures for use by States and ROs. Develops HCFA instructions for RO staff concerning the financial review of the Medicaid

program and reviews RO performance to assure consistency in implementation of instructions. Directs and coordinates the fiscal aspects of title XIX program activities. provides the definitive HCFA interpretation of Medicaid reimbursement policy for administration and training costs. Responsible for operational policies regarding availability of Federal financial participation (FFP), designation of appropriate FFP rates, and for issuing interpretations to ROs regarding operational FFP issues. Directs RO financial reviews of State agencies and oversees the Medicaid claims processing review activity. Develops and implements a system to evaluate freedom of choice waivers. Develops and implements policies, procedures, and instructions for the oversight of States' administration of home and community-based waivers (HCBW). Develops methodologies for processing HCBW expenditure reports. Conducts analyses of States' administration of HCBW. Oversees the implementation of Medicaid maternal and child health and early and periodic screening, diagnosis, and treatment activities and provides technical assistance and guidance to States, ROs, and other interested groups. Directs the Medicaid program compliance process including assisting ROs and States in resolving compliance issues and conducting compliance conferences and hearings as necessary.

• Section FP.20.B.2.b., Division of Program Performance (FPC42), is amended by deleting the existing functional statement and replacing it with the following:

b. Division of Program Performance (FPC42)

Develops, implements, directs, and operates the national Medicaid eligibility quality control program to determine the effectiveness of Medical State agencies' performance in the area of eligibility determinations. Promulgates guidelines and requirements for operation and direction of the Medicaid eligibility quality control program. Systematically reviews established Medicaid eligibility quality control regulations and policies and develops and implements appropriate enhancements. Establishes and operates systems for reporting and analyzing results of State reviews in the Medicaid eligibility quality control program. Provides ongoing technical assistance to systems users. Directs systems maintenance and support contractor performance. Provides documentation and analysis necessary to initiate and support actions on disallowances, penalties and corrective action requirements, and adjudication of appeals of disallowances and penalties. Develops, implements and operates a comprehensive system for assessing and assuring adherence to the requirements for operating the Medicaid eligibility quality control system. Conducts performance assessments and prepares recurring and special reports of findings. Develops and implements a system for reviewing the State performance of the Income Eligibility Verification System (IEVS) requirements. Develops and interprets regulations and policies for States to establish IEVS and coordinates all IEVS activities within and outside HCFA. Develops and promulgates program policy for utilizing the Systematic Alien Verification for Entitlement (SAVE) system. Provides technical assistance on IEVS and SAVE system to regional offices (ROs) and serves as liaison between the Immigration and Naturalization Service, Internal Revenue Service, other Federal agencies, and the ROs. Provides expertise on sampling, precision, universe identification, and other technical statistical issues in support of the bureau's quality control and assessment programs. Provides limited technical assistance on computers and their applications to work products. Develops and promulgates policies and procedures for proper maintenance, review, and approval of State plans and their amendments. Monitors State compliance to plans and oversees the compliance process. Develops compliance issues for disallowance reviews. Directs targeted reviews of areas identified as potentially noncompliant due to erroneous plan approval or improper State implementation.

• Section FP.20.B.3.b., Division of Institutional Reimbursement Assessment (FPC52) is amended by deleting the existing organizational title and functional statement and replacing them with the following:

b. Division of Institutional Payment Oversight (FPC52)

Develops, implements, directs, and operates national quality control programs to determine the effectiveness of Medicare contractors' payments to institutional providers including assessment of cost-based, prospective and alternative payment systems, and oversight of chain providers' home office costs. Assures uniform national assessment of Medicare contractors' compliance with institutional payment performance standards, program requirements, and government auditing standards. Promulgates guidelines and requirements for direction of Medicare payment assessment and quality control programs. Establishes and operates systems for analyzing results of Medicare payment assessment and quality contol programs. Assesses performance, identifies performance deficiencies and trends, and determines the need for new tracking and evaluation techniques. Develops, implements, and operates a comprehensive system for assessing and assuring adherence to requirements for operating institutional payment quality control and assessment programs. Systematically reviews established Medicare payment quality control and assessment programs and implements appropriate enhancements reflecting operational, legislative, and administrative changes. Prepares recurring and special reports of operational effectiveness in institutional payment to document performance assessment results. Prepares comparative analyses of individual contractor performance, interprets quantifiable findings, and identifies trends, significant problems, and appropriate corrective actions. Consults with other components in evaluating the impact of existing and proposed program requirements for effective payment to institutional providers and in developing proposals for legislative, policy, or operational reform.

Dated: January 17, 1990.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 89-2362 Filed 1-31-90; 8:45 am]

BILLING CODE 4120-01-M

[BPD-644-N]

Medicare Program; Establishment of Medicare Economic Index Effective April 1, 1990

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

ACTION: Notice.

SUMMARY: This notice updates the Medicare Economic Index (MEI), which is used to calculate the prevailing charge levels that help to determine reasonable charges for certain physician services under the Medicare Supplementary Medical Insurance (Part B) program. For physician services furnished on or after April 1, 1990, and before January 1, 1991 the increase for primary care services will be 4.2 percent, and for other services it will be 2.0 percent.

EFFECTIVE DATES: April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (301) 966-4498.

SUPPLEMENTARY INFORMATION:

I. Background and Provisions

Payment under the Medicare Supplementary Medical Insurance (Part B) program for certain physician services is based on a reasonable charge which, under section 1842(b) of the Social Security Act (the Act), may not exceed the lowest of: (1) The physician's actual charge for the service, (2) His or her customary charge for that service, (3) The prevailing charge of physicians for similar services in the locality adjusted for the Medicare Economic Index (MEI), or (4) A special reasonable charge limit that applies if HCFA determines that applying the above criteria to a particular service or category of services would result in grossly excessive charges. (When the use of the customary and prevailing charges results in a payment that is grossly deficient, a higher reasonable charge may be recognized.) The prevailing charge for a service, before adjustment for the MEI, is calculated at the 75th percentile of physicians' customary charges for a similar service in the same locality. In computing prevailing charges, the carrier uses the customary charges of physicians in the locality weighted by frequency.

The MEI increase for fee screen year (FSY) 1988, that is, the 12-month period beginning January 1, 1988 was announced in the October 14, 1987 **Federal Register** as 3.6 percent (52 FR 38145). However, due to the enactment on December 22, 1987 of Pub. L. 100–203, the Omnibus Budget Reconciliation Act of 1987, that increase did not go into effect on January 1, 1988. Instead, section 4041(a) of Pub. L. 100–203 enacted a new section 1842(b)(4)(v) of the Act to provide that there would be no increase in the prevailing charge limits for the first three months of 1988. Section 4042(a) of Pub. L. 100–203 enacted a new section 1842(b)(4)(F)(ii) of the Act to provide that beginning April 1, 1988, the MEI for the remainder of FSY 1988 would be increased in the following way:

- For primary care services, 3.6 percent.
- For other physician services, 1.0 percent.

These increases were effective on April 1, 1988.

Section 4042(a) of Pub. L. 100–203 also enacted a new section 1842(b)(4)(F)(iii) of the Act to establish the following increases in the MEI for FSY 1989:

- For primary care services, 3.0 percent.
- For other physician services, 1.0 percent.

These increases became effective on January 1, 1989.

Section 4042(b) of Pub. L. 100–203 enacted a new section 1842(b)(4)(E)(iii) of the Act to define primary care services as physician services that constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care and long-term care medical services, or nursing home, boarding home, domiciliary or custodial care medical services.

Section 9331 (c)(4) and (5) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) prohibits HCFA from changing the methodology for the MEI until it has consulted with appropriate experts and completed a study. HCFA has initiated such a study but has not yet reached any firm conclusions for changing the index. When decisions are made to change the MEI methodology, HCFA will publish proposed changes in the **Federal Register** and allow opportunity for public comment. Because HCFA has not proposed a new MEI methodology, HCFA is continuning to apply the methodology for the calculation of the MEI as set forth in 42 CFR 405.504(a)(3)(i). (This methodology was described in detail in the September 30, 1985 notice (50 FR 39941)).

In that notice, we explained that various indices are used to estimate the price expenses. One component, the office space component, is based on the housing component of the Consumer Price Index (CPI). The Bureau of Labor Statistics (BLS) has subsequently revised its measure of the housing component of the CPI and a discussion of this revision is contained in BLS Report 593, "CPI Issues," February 1980. Following the methodology set forth in § 405.504(a)(3)(i), we determined that the MEI increase for FSY 1990, effective on January 1, 1990, should be 4.2 percent. However, section 6107(a)(1) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, changed the effective date to April 1, 1990. Because of the delay in the effective date for applying the MEI update, the prevailing charge levels for items and services furnished from January 1, 1990 through March 31, 1990 are determined on the same basis as prevailing charge levels for those services furnished during calendar year 1989. For items and services furnished on or after April 1, 1990, the percentage increase in the MEI is as follows:

- For primary care services: 4.2 percent
- For other physician services: 2.0 percent
- For radiology and anesthesiology services and for other services as described in section 1842(b)(4)(E)(iv) of the Act: 0.0 percent.

The changes in the components of the MEI that led to the 4.2 percent change are as follows:

Annual percent change of the components of the Medicare Economic Index [1]	Percent change [2]
1. Hourly earning of non-supervisory workers in finance, insurance, and real estate [3]	5.1
2. Housing component of the consumer price index	3.7
3. Private transportation component of the consumer price index	4.4
4. Drugs and pharmaceutical component of the consumer price index	8.1
5. All other, miscellaneous, expenses (tied to the entire consumer price index)	4.6
6. Premiums for malpractice insurance [4]	20.6
7. Average weekly earnings of production and nonsupervisory workers [3]	3.8
8. Index of output per man hour of employed nonfarm workers [3]	1.1
9. Change in average weekly earnings net of change in output per man hour	2.7

[1] The weights for the MEI components, including the malpractice component, were dervied from a special study done for HCFA by a consultant in 1982. The values are 0.47, 0.23, 0.07, 0.09, 0.04 and 0.10 for components one through six, respectively. In addition to the above weights, a 40–60 percent breakdown of gross income between physician practice expenses and physicians' earnings was used.

[2] The rates of change are for the 12-month period ended June 30, 1989. The same base period is used for computing customary and prevailing charges.

[3] Figures are published monthly in the Bureau of Labor Statistics' Monthly Labor Review.

[4] Dervied from a survey of several major insurers (latest available percent change data are for calendar year 1988). This is consistent with prior computations of the malpractice insurance component of the MEI.

II. Regulatory Impact Statement

This notice merely announces the MEI changes prescribed by section 1842(b)(4) of the Act, as amended by section 4042 of Pub. L. 100–203 and section 6107(a) and (b) of Pub. L. 101–239. This notice is neither a proposed rule nor a final rule issued after a proposal and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291, the Regulatory Flexibility Act (5 U.S.C. 601 through 612) or section 1102(b) of the Act.

III. Other Required Information

A. Paperwork Reduction Act

The changes in this notice do not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. Public Comment Period

We are publishing this notice for public comment prior to its taking effect since it merely announces the rate of change in the MEI as required by legislation. As noted above, the basic methodology for the calculation of the figures has not changed. Thus, we find it unnecessary to publish this document in proposed form with a prior comment period.

(Section 1842(b)(4) of the Social Security Act (42 U.S.C. 1395u(b) and 42 CFR 405.504(a)(3)(i)))

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

Dated: January 22, 1990.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 90-2361 Filed 1-31-90; 8:45 am]

BILLING CODE 4120-01-M

Office of Human Development Services

Federal Council on the Aging; Meeting

AGENCY HOLDING THE MEETING: Federal Council on the Aging.

TIME AND DATE: Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, February 14, 1990, begins at 9 a.m. and ends at 5 p.m., on Thursday, February 15, 1990, and begins at 9 a.m. and ends at 5 p.m. on Friday, February 16, 1990.

PLACE: On Wednesday, February 14, Boardroom 108, The Capitol Hill Hotel, 200 C Street, SE., Washington, DC, from 9 a.m. to 5 p.m., Thursday, February 15, Boardroom 108, The Capitol Hill Hotel, 200 C Street, SE., Washington, DC, from 9 a.m. to 5 p.m., and Friday, February 16, Boardroom 108, The Capitol Hill Hotel, 200 C Street, SE., Washington, DC from 9 a.m.–5 p.m.

STATUS: Meeting is open to the public.

CONTACT PERSON: Kevin W. Parks, Room 4280, Wilbur Cohen Federal Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub.L. 93–29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub.L. 92–453, 5 U.S.C. App. 1, sec. 10, 1976) that the Council will hold its February quarterly meeting on February 14, 15, and 16, 1990, from 9 a.m.–5 p.m. respectively, in Boardroom 108 at The Capitol Hill Hotel, 200 C Street, SE., Washington, DC 20003. On February 14, the Council will conduct its regular business meeting during the morning session. The afternoon session will focus on issues of Guardianship and the Elderly.

The agenda is as follows: A presentation by representatives of the American Bar Association, Commission on Legal Problems of the Elderly, who will discuss the progress made in the area of guardianship and the elderly. This session will be a review of the progress made as a result of Council's recommendations issued at their May, 1988 Meeting.

On February 15th and 16th respectively, from 9 a.m.–5 p.m., the Council will continue and conclude its regular business meeting. The agenda will include: Introduction of new members; discussion of Current Projects, Committee Reports, Agenda Projects for 1990–91, the 1989 Annual Report to the President and Recommendations included therein—location of 1990 meetings; in-house long range planning deliberation on future activities and agenda for future meetings.

The rest of the three-day meeting will include discussion of Agenda Projects and other matters as they relate to the aging population.

Dated: January 26, 1990.

[FR Doc. 90-2360 Filed 1-31-90; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-08-4320-12]

Meeting, Kingman Resource Area Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Kingman Resource Area Grazing Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Tuesday, March 13, 1990. The meeting will start at 9 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program
2. Status of the Bureau's Planning and Environmental Impact Statements
3. Wild Horse gather in the Cerbat Herd Management Area
4. Status of Wilderness Program
5. Riparian Management
6. Report on Range Improvements for FY 90
7. Range Policy Update
8. Request for Advisory Board Expenditures
9. Arrangements for Future Meetings

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: January 23, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-2275 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-32-M

[CO-010-90-4333-13]

Off-Road Vehicle Designation; Colorado

AGENCY: Bureau of Land Management, Dept. of the Interior.

ACTION: Correction of notice of off-road vehicle designation.

SUMMARY: Notice was given on September 29, 1988, that certain areas within the Kremmling Resource Area of the Craig District, Colorado were subject to off-road vehicle designations. These designations were the result of the 1984 Kremmling Resource Management Plan. This notice was published in the **Federal Register** of September 29, 1988, Vol. 53, pages 38091–38092. Copies of the original notice are available at the Kremmling Resource Area Office.

Information concerning the location of the Resource Conservation/Wolford Mountain Areas is incorrect and the reference to the Dice Hill area was inadvertently left out of the notice.

Paragraph B.1.d. is corrected by removing the phrase "10 miles south" and replacing it with "north".

Paragraph B.1.e. is added as follows:

e. Dice Hill—5,800 acres located 10 miles south of Kremmling, Colorado. Seasonal closures and limitations are also in effect.

Paragraph B.$. is corrected to B.4.

FOR FURTHER INFORMATION CONTACT: Area Manager, Kremmling Resources

Area, P O Box 68, Kremmling, Colorado 80459.

David Harr,

Acting Area Manager.

[FR Doc. 90-2269 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-JB-M

[NV-050-00-4410-08]

Nellis Air Force Range; Resource Management Plan

January 25, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Nellis Air Force Range Proposed Resource Plan and Final Environmental Impact Statement and Notice of the proposed designation of the Timber Mountain Caldera National Natural Landmark as an Area of Critical Environmental Concern.

SUMMARY: The Nellis Air Force Range Proposed Resource Plan and Final Environmental Impact Statement (PRP/FEIS) is available to the public. The PRP/FEIS was prepared as a result of the Military Lands Withdrawal Act of 1986 (Pub. L. 99-606) and as amended on June 17, 1988 (Pub. L. 100-338). The proposed plan is designed to direct the management of natural resources on approximately 2,209,326 acres of withdrawn public lands in Nye, Lincoln, and Clark Counties, Nevada. These lands have been withdrawn for use as a high-hazard military weapons training and testing area, thus limiting resource management options. The PRP/FEIS does not address military uses or impacts within the planning area; those uses and impacts were addressed in two separate EISs prepared in 1981 and 1986.

The PRP/FEIS may be protested by any person who participated in the planning process and has an interest which is or may be adversely affected by the approval of the plan. A protest may raise only those issues which were submitted for the record during the planning process. Protests must be in writing and must include the following information:

a. The name, mailing address, telephone number, and interest of the person filing the protest.

b. A statement of the issue or issues being protested.

c. A statement of the part or parts of the document being protested.

d. A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the records.

e. A short, concise statement explaining precisely why the BLM's Nevada State Director's decision is wrong.

DATES: Protests on the Nellis Air Force Range PRP/FEIS must be filed no later than March 2, 1990.

ADDRESSES: Protests must be sent to Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The PRP/FEIS focuses on the management of vegetation, wildlife habitat, and wild horses. The management of vegetation, especially riparian areas, will be emphasized to maximize wildlife values within the planning area. Wild horses will be managed to achieve a thriving ecological balance on the Nevada Wild Horse Range. BLM initiated or authorized actions in the planning area will comply with Visual Resources Management Class II and IV Guidelines.

In addition to the issues identified above, the PRP/FEIS proposes to designate 110,720 acres of the Timber Mountain Caldera National Natural Landmark located within the Nellis Air Force Range Planning Area as an Area of Critical Environmental Concern (ACEC). The rationale used for proposing designation of this area is that it will maintain an outstanding example of a unique ecological feature. The proposed ACEC is already withdrawn from all forms of public land entry. The BLM will not authorize or initiate any surface-disturbing activities within the ACEC that would detract from its value. Access to the proposed ACEC is restricted and subject to Air Force authorization. This will not change if the ACEC is designated. This notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs.

The Nellis Air Force Range PRP/FEIS has been mailed to all interested individuals, agencies, interest groups and organizations and to those who participated in the planning process. Additional copies of the Draft Resource Plan and Environmental Impact Statement are available upon request from the Las Vegas District Office. Copies of both documents are also available for review at the Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada, and the Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, Nevada.

FOR FURTHER INFORMATION CONTACT: Roger Alexander, Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, NV 89126, telephone (702) 646-8800.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 90-2345 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Land Management

[NV-930-00-4214-10; N-51511]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

January 23, 1990.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 9.12 acres of public land to protect an area for a fire station complex near McDermitt, Nevada. This notice closes the land for up to 2 years from settlement, sale, location and entry under the general land laws, including the United States mining laws. The land will remain open to leasing under the mineral leasing laws.

DATES: Comments and requests for a public meeting should be received on or before May 2, 1990.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702-328-6326.

SUPPLEMENTARY INFORMATION: On December 21, 1989, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location and entry under the public land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 47 N., R. 38 E.,

Starting at the section corner common to sections 8, 9, 16, and 17, and traversing N. 89° 37.1' E., a distance of 24.965 chains to a point; thence S. 0° 04.4' W., a distance of 5.003 chains to the point of beginning; thence traversing N. 89° 37.4' E., a distance of 2.524 chains; thence S. 0° 07.6' W., a distance of 8.078 chains; thence S. 87° 53.5' W., a distance of 10.304 chains; thence N. 10° 16.3' W., a distance of 8.518 chains; thence N. 89° 37.4' E., a distance of 9.312 chains to the point of beginning.

The area contains 9.12 acres in Humboldt County.

For a period of 90 days from the date of publication of this notice, all persons

who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period by the BLM authorized officer are any temporary uses which will not interfere with the purpose of the withdrawal.

The temporary segregation of the lands in connection with this withdrawal application shall not affect the administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 90-2347 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-MC-M

Bureau of Land Management

[AZ-020-00-4212-08]

Phoenix District, Arizona: Supplement To Notice of Intent To Prepare An Amendment To The Phoenix Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Addition to land considered for retention and acquisition in the Phoenix Resource Management Plan Amendment (**Federal Register**, Vol. 54, No. 56, Pg. 12288, Friday, March 24, 1989).

SUMMARY: An area containing 1,600 acres of public land, 11,000 acres of state land and 19,000 acres of private land in the vicinity of Wagoner and Walnut Grove, Yavapai County, Arizona will be considered for retention and future acqustion. The public land portion is identified in current BLM planning documents as suitable for disposal through private or state exchange or sale. Recent inquiries by some land owners in the subject area urging the BLM to consider exchanges leading to public acquisition of important riparian areas along the upper Hasayampa River has prompted this addition to the land considered in the management plan amendment.

FOR FURTHER INFORMATION CONTACT: Don Ducote, Tucson Field Office (602) 670-4321 or Bill Gibson, Phoenix Resource Area (602) 863-4464.

SUPPLEMENTARY INFORMATION: Complete records of all phases of the planning process are available for public review at the Phoenix Resource Area Office, 2015 West Deer Valley Road, Phoenix, AZ 85027. Written communication should be sent to Authur E. Tower, Phoenix Resource Area Manager at the area office in Phoenix or the Tucson Field Ofice, 1321 E. Ajo Way, Suite B-121, Tucson, AZ 85713.

Henri Bisson

District Manager

[FR Doc. 90-2351 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-32-M

[NV-050-00-4210-02]

Las Vegas District Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held February 27, 1990, at 10:00 a.m. in the Las Vegas District Office at 4765 Vegas Drive, Las Vegas, Nevada.

The meeting agenda will include:

1. Agenda approval and review and approval of minutes of the last meeting.
2. Status report on Desert Tortoise Habitat Conservation Plan.
3. Status report on Nevada Wilderness Study areas.
4. Resource Management Plan Initiation—Stateline Resource Area.
5. Public Law 99-606—Nellis Air Force Range Proposed Resource Plan and Final EIS.
6. Election of Vice Chairman.
7. Unfinished business.
8. Public Comments.

Advisory Council meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126, prior to January 27, 1990.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on March 27, 1990.

Dated: January 24, 1990.

Ben F. Collins,

District Manager, Las Vegas, Nevada.

[FR Doc. 90-2349 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-HC-M

[MT-920-90-4111-11; SDM 65529]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease SDM 65529, Fall River County, South Dakota, was timely filed and accompanied by the required rental accuring from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-2/3% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: January 25, 1990.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 89-2367 Filed 1-31-89; 8:45 am]

BILLING CODE 4310-DN-M

[CACA 22471]

Realty Action; Exchange of Public and Private Lands in Lassen County, California

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of realty action; exchange of public and private lands in Lassen County, California (CACA 22471).

SUMMARY: The following described public lands and interests in land have been examined and found suitable for disposal by exchange under section 206 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1716):

Mt. Diablo Meridian, California

T.30N., R.13E.,
Section 32, N2SW, NWSE.
T.30N., R.15E.,
Section 4, Lots 1, 2, 3, 4, 5.
T.31N., R.15E.,
Section 8, NENW, SWSE;
Section 15, E2NE, SE;
Section 17, NWNE;
Section 20, SESW, E2E2SWSW;
Section 21, E2, N2NW, SENW, NESW;
Section 22, N2N2;
Section 29, N2NE, NENW.
comprising 1407.64 acres of public land.

The BLM will issue Right-of-Way Grant CA CA 25809 under section 501 of FLPMA to Henry Schechert for a cattle trail within the boundary of public lands described as T.31N., R.15E., M.D.M., section 7, NENWSE, NESENWSE. The fair market value of the right-of-way shall be appraised and made a part of the total appraised value of the public land in this exchange.

In exchange for these lands, the United States will acquire the following described lands from Henry Schechert:

Mt. Diablo Meridian, California

T.30N., R.15E.,
Section 5, W2 of Lot 7, E2 of Lot 8, NESW, SE;
Section 8, NENE;
Section 9, NW.
T.31N., R.15E.,
Section 7, that portion of private lands lying west of the Southern Pacific Railroad R/W in the SESE, as recorded in Lassen County Records, Book 27 of Maps, pages 76 & 77.
Section 18, that portion of private lands lying west of the Southern Pacific Railroad R/W in the E2NE, as recorded in Lassen County Records, Book 27 of Maps, pages 76 & 77.
(Total of sections 7 and 18 is 18.29 acres)
Section 29, that portion of private lands lying west of the Southern Pacific Railroad R/W in the S2NW and in the SW, as recorded in Lassen County Records, Book 27 of Maps, pages 76 & 77.
(Total of section 29 is 192.85 acres)
Section 32, E2W2 (excluding any portion within the SPRR Right-of-Way).
T.32N., R.14E.,
Section 36, All.
comprising 1491.85 acres of private lands.

The purpose of this exchange is to acquire the non-Federal lands which have public values for wildlife habitat and livestock grazing. The exchange will block up isolated parcels of public lands which will allow for proper management in developing water holes. The public interest will be served in completing the exchange. There are no changes in grazing permits as a result of the exchange.

The values of the lands to be exchanged are approximately equal: if needed, full equalization of values will be achieved by balancing payment in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

All mineral interests in the public and private lands will be included in the exchange.

Lands to be transferred from the United States will be subject to the following reservations and restrictions.

1. Pursuant to the authority contained in Executive Order 11990 of May 24, 1977, and in section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716), this patent is subject to a restriction which constitutes a convenant running with the land, that the patentee and any successor in interest will maintain the existing 64.7 acres of wetlands within the 80 acres of T.31N., R.15E., M.D.M., section 8, SWSE, and section 17, NWNE.

2. Pursuant to the authority contained in section 3(d) of Executive Order 11988 of May 24, 1977, and in section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716), this patent is subject to a restriction which constitutes a convenant running with the land, that the land lying within the Federal, State, or local government-designated 100-year floodplain may be used only for: (1) Farming, ranching or other similar agricultural developments, but not for residential buildings, or (2) for park and non-intensive open space recreation purposes. This restriction affects the lands in T.31N., R.15E., M.D.M., section 15, SENE, N2SE; section 21, E2, N2NW, SENW, NESW; section 22, N2N2; section 29, N2NE, NENW.

3. There will be reserved to the United States in the public lands to be exchanged, a right-of-way thereon for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 43 CFR 945).

Lands to be transferred from the United States will also be subject to the following existing rights:

T.31N., R.15E., M.D.M., sections 20, and 29:
S 3381. Southern Pacific Railroad, 200-ft right-of-way for a railroad.
T.31N., R.15E., M.D.M., section 15:
CA 6300, a 50-ft right-of-way for access road, Ronald Laver.
S 035335, a 40-ft right-of-way for telephone/telegraph line.
S 4473, a 400-ft right-of-way for a state highway.
T.30N., R.15E., M.D.M., section 4:
S 3381, Southern Pacific Railroad, 200-ft right-of-way for railroad.

Decision RM–1.14 of the Willow Creek Management Framework Plan regarding the stock holding corral is hereby amended to approve disposal of the land in T.31N., R.15E., section 15, E2NE, SE.

Publication of this notice in the **Federal Register** shall segregate the public lands described herein from all other forms of appropriation and entry under the public land laws and the mining laws for a period of two years. The exchange is expected to be completed before the end of that period.

Further information concerning the exchange, including the environmental assessment, is available for review at the Susanville District Office, 750 Hall Street, Susanville, CA 96130.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Comments will be evaluated by the California State Director of the Bureau of Land Management, who may affirm, vacate, or modify this realty action.

INFORMATION: For additional information on this matter, call or write the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA 96130. Telephone (916) 257–5381.

Dated: January 24, 1990.

Herrick E. Hanks,

District Manager.

[FR Doc. 90–2346 Filed 1–31–90; 8:45 am]

BILLING CODE 4310–40–M

[ID–060–90–4212–14]

Coeur d'Alene District, Idaho; Noncompetitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Shoshone County, Idaho.

SUMMARY: The following public lands have been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) at not less than the appraised fair market value:

Parcel no.	Legal description	Acres	Proponent
	Boise Meridian, T. 48 N., R. 5 E., sec. 9.	.....	

Parcel no.	Legal description	Acres	Proponent
I-25761 B	Tract 47.....	0.50	Affected homeowners

Publication of this notice in the **Federal Register** segregates the above lands from the operation of the public land laws and the mining laws except for a direct sale pursuant to section 203 of FLPMA. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

Sale procedures: The land is proposed to be offered for sale to the affected homeowners referenced above who have occupied the area inadvertently in trespass for several years. Direct sale procedures are being used since competitive sales would not be appropriate and the public interest would best be served by direct sale to the parties involved. Benefits of a direct sale will be to resolve potential claims to title and to give consideration to the parties involved who have significant interests in the subject property.

The sale proposal is consistent with the Bureau of Land Management's planning system. The land is not needed for any resource program, is difficult and uneconomical to manage, and is not suitable for management by another Federal department or agency.

Conveyance of the available mineral interests under section 209 of FLPMA will occur simultaneously with the sale of the parcel. Acceptance of the direct sale offer and payment of a $50.00 filing fee will constitute an application for conveyance of those mineral interests.

The patent, when issued, will contain a reservation to the United States for ditches and canals and will be subject to any other existing rights of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Eric Thomson, Realty Specialist, at (208) 765–1511. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 24, 1990.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 89–2334 Filed 1–31–90; 8:45 am]

BILLING CODE 4310-GG-M

[CO–030–09–4212–13–2200]

Realty Action; New Mexico Principal Meridian; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action correction COC49708.

SUMMARY: **Federal Register** Notice CO–030–09–4212–13–2200 dated December 1, 1989 and published December 7, 1989 (Vol. 54 FR 50542) stated "certain parcels within the following described public land have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

New Mexico Principal Meridian, Colorado

T. 44 N., R. 12 W.
Sec. 22, E½E½

This legal description is hereby corrected to read:

T. 44 N., R. 12 W.
Sec. 22, E½

Dated: January 26, 1990.

Alan L. Kesterke,

District Manager.

[FR Doc. 90–2368 Filed 1–31–90; 8:45 am]

BILLING CODE 4310-JB-M

[ES–940–00–4730–13 (ES–041954, Group 10)]

Filing of Plat of Dependent Resurvey; Maine

January 25, 1990.

1. The plat of the dependent resurvey of the boundaries of the land held in trust for the Penobscot Indian Nation in Township 3, Range 1, North of Bingham's Penobscot Purchase (N.B.P.P.), Penobscot County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on March 12, 1990.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., March 12, 1990.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Stephen G. Kopach,

Deputy State Director for Cadastral Survey.

[FR Doc. 90–2336 Filed 1–31–90; 8:45 am]

BILLING CODE 4310-GJ-M

[WY–940–00–4730–12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., January 23, 1990.

Sixth Principal Meridian

T. 56 N., R. 94 W.

The plat showing a subdivision of original lot 55–I, T. 56 N., R. 94 W., Sixth Principal Meridian, Wyoming, was accepted January 17, 1990.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

T. 14 N., R. 18 W.

The plat, in two sheets, representing the dependent resurvey of a protion of the south boundary, the west boundary, a portion of the north boundary, protions of the subdivisional lines, portions of Mineral Survey No. 336, and the subdivision of certain sections, T. 14 N., R. 81 W., Sixth Principal Meridian, Wyoming, Group No. 423, was accepted January 17, 1990.

This survey was executed to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: January 23, 1990.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 90–2335 Filed 1–31–90; 8:45 am]

BILLING CODE 4310-22-M

[CA-050-4332-06]

Availability and Public Comment; South Fork Eel River

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice.

SUMMARY: Notice is hereby given that a wilderness inventory for the South Fork Eel River, prepared by the Ukiah District, California, Bureau of Land Management, is available for public review and comment. The comment period will end Friday, March 9, 1990. Copies of the inventory will be available for review at: Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825; Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482; and Arcata Resource Area Office, 1125 16th Street, Arcata, CA 95521. Comments should be addressed to District Manager, 555 Leslie Street, Ukiah, CA 95482 on or before March 9, 1990.

Dated: January 24, 1990.

Earle Curran,

Acting District Manager.

[FR Doc. 90-2348 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-40-M

[ID-943-90-4214-11; I-14985]

Proposed Continuation of Withdrawals; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 23,973.00 acres withdrawn for the Anderson Ranch and Arrowrock Reservoirs and the Minidoka Reclamation project be continued for the remaining life of the facilities, which vary from 16 to 75 years. The lands are being used for irrigation, flood control, power generation and wildlife mitigation purposes. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATES: Comments should be received on or before May 2, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1597.

The Bureau of Reclamation proposes that the existing land withdrawals made by various public land and secretarial orders be continued for periods ranging from 16 to 75 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The lands are located within the following-described townships and sections:

Boise Meridian

Arrowrock Reservoir

(Boise National Forest)

T. 1 N., R. 7 E.,
Secs. 3 and 15,
T. 1 N., R. 8 E.,
Sec. 19.
T. 2 N., R. 6 E.,
Secs. 2 and 3.
T. 2 W., R. 10 E.,
Secs. 5 and 7.
T. 3 N., R. 4 E.,
Sec. 13.
T. 3 N., R. 5 E.,
Secs. 1, 2, 7 to 12, inclusive, 14, 15, 17 to 21, inclusive and 23 to 26, inclusive.
T. 3 N., R. 6 E.,
Secs. 6, 28 and 31 to 34, inclusive.
T. 4 N., R. 5 E.,
Sec. 36.
T. 4 N., R. 6 E.,
Secs. 13, 22 to 24, inclusive, 27 to 31, inclusive and 33.
T. 4 N., R. 7 E.,
Secs. 4, 5, 7, 8 and 18.
T. 5 N., R. 7 E.,
Secs. 1, 2, 23, 25, 26, 28, 33 and 34.
T. 5 N., R. 8 E.,
Secs. 6, 8 to 12, inclusive and 17 to 19, inclusive.
T. 6 N., R. 8 E.
Secs 20, 29 and 32.
T. 1 S., R. 8 E.,
Secs. 5 and 6.

Anderson Ranch Reservoir

(Boise National Forest)

T. 1 N., R. 7 E.,
Sec. 4.
T. 1 N., R. 8 E.,
Secs. 30 to 31.
T. 1 N., R. 9 E.,
Secs. 13 and 20 to 32, inclusive.
T. 1 N., R. 10 E.,
Secs. 5 to 8, inclusive and 17 to 19, inclusive.
T. 2 N., R. 6 E.,
Secs. 12, 24 and 25;
Secs. 10 to 13, inclusive.
T. 2 N., R. 7 E.,
Secs. 29, 30, 32 and 33.
T. 2 N., R. 10 E.,
Secs. 19 and 30 to 32, inclusive.
T. 1 S., R. 8 E.,
Secs. 1, 8, 11, 12, 14, 15 and 23.
T. 1 S., R. 9 E.,
Secs. 5 to 7, inclusive.

Minidoka Project

(Outside National Forest Boundaries)

T. 10 S., R. 21 E.,
Sec. 24.

The areas described aggregate 23,973.00 acres in Elmore, Boise and Jerome Counties.

The withdrawals are essential for protection of established reservoir sites for irrigation, flood control, power generation and for wildlife mitigation. The withdrawals closed the lands to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued; and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: January 24, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 89-2350 Filed 1-31-89; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service

Outer Continental Shelf; Notification Regarding Adoption of North American Datum (NAD) 83 Conversion Software and Notice that Lease Boundaries Will Not Change Under NAD 83

This document is notification that the Department of the Interior, Minerals Management Service (MMS) will use the Department of Commerce, National Geodetic Survey conversion package to transform all NAD 27 offshore coordinate values to NAD 83.

This decision is in accordance with the Federal Geodetic Control Committee's decision on December 5, 1989, to adopt the NAD Conversion package as the official transformation program for the Federal Government.

The MMS also wishes to advise Outer Continental Shelf lessees that rights issued under NAD 27 legal descriptions will continue to be protected as warranted under that description.

FOR FURTHER INFORMATION CONTACT: Leland F. Thormahlen, Chief, Minerals Management Service Outer Continental Shelf Survey Group, Denver, Colorado, (303) 236-7050.

Dated: January 19, 1990.

Barry Williamson,

Director, Minerals Management Service.

[FR Doc. 90–2261 Filed 1–31–90; 8:45 am]

BILLING CODE 4310-MR-M

Form MMS-2014, Report of Sales and Royalty Remittance

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for comments on format and use of form MMS–2014, Report of Sales and Royalty Remittance (OMB Clearance Number 1010–0022).

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, and other Federal agencies an opportunity to comment on proposed and/or currently in use reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burdern is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly addressed. Currently MMS is soliciting comments concerning the format and use of Form MMS–2014, Report of Sales and Royalty Remittance.

DATES: Written comments must be submitted March 5, 1990. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice you should advise the contract listed below as soon as possible of your intention to submit comments.

ADDRESSES: Comments on the use of Form MMS–2014 should be submitted to Mr. Dennis C. Whitcomb, Chief, Rules and Procedures Branch, MMS Royalty Management Program, MS 662, P.O. Box 25165, Denver, CO, 80225, telephone (303) 231–3432.

FOR FURTHER INFORMATION CONTACT: Copies of the form with explanatory information may be obtained by contacting Ms. Jeane Kalas, Rules and Procedures Branch, (303) 231–3046.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill the requirements of the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*, the Secretary of the Interior is required to gather information on sales of oil and gas taken from leased Federal and Indian lands and to ensure the proper royalty amount of those sales is paid to the Indians, the States, and the Federal Government in a timely manner. Form MMS–2014 is used to provide the information required by the Secretary to fulfill his responsibility. This form must accompany royalty payments from Indian and onshore and offshore Federal oil and gas leases.

II. Current Actions

The format and content of Form MMS–2014 are unchanged.

III. Request for Comments

Comments from users of the form and other interested parties should include the following general areas:

A. Are the instructions and definitions provided by MMS clear and sufficient? If not, what clarification is required

B. Is the data requested on the form available from respondents' records in the same format as requested on the form, or does the form require that data must be extracted from company records and reformatted especially for use on the form?

C. Reporting burden for completing an average of 10 lines on this form is estimated to range from one-half hour for those respondents using tape media to 1.5 hours for those respondents manually completing the form. How much time, including time for gathering data, calculating value, typing, and mailing do you estimate is required monthly to complete and submit 10 lines of data on the form?

D. What is your estimate of the costs, direct and indirect, specifically related to gathering and maintaining data required on the form, and typing and mailing the form monthly? Provide details of your estimates.

E. Considering that the Secretary is required to collect this information, do you have specific suggestions to make this information collection more efficient?

F. Do you know specifically of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of collection.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also willl become a matter of public record.

Authority: Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*; Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*; 30 CFR 201 *et seq.*

Dated: January 18, 1990.

Donald T. Sant,

Acting Associate Director for Royalty Management

[FR Doc. 90–2272 Filed 1–31–90; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Extension of Comment Period on the Draft Environmental Impact Statement, George Washington Memorial Parkway—Potomac Greens

AGENCY: National Park Service, Interior.

ACTION: Comment period extension.

SUMMARY: Notice is hereby given that the National Park Service is extending the original 60-day public comment period which started on November 30, 1989 an additional month until February 28, 1990.

The views of interested persons and organizations on the Draft Environmental Impact Statement are solicited and may be expressed orally at the public hearing or in writing during the comment period. The Draft Environmental Impact Statement is available for public review at the National Park Service, National Capitol Region, Office of Land Use Coordination, 1100 Ohio Drive, SW., room 201, Washington, DC.

The Draft Environmental Impact Statement is required by Public Law 100–446, and addresses the potential impacts to the George Washington Memorial Parkway which may result form the proposed private 38-acre Potomac Greens development located immediately to the west of Daingerfield Island on the parkway in Alexandria, Virginia. The Draft Environmental Impact Statement focuses on the potential impacts of the planned Potomac Greens development on traffic and the visual, recreational, and historical integrity of the parkway. The Draft Environmental Impact Statement also presents mitigating alternatives for consideration.

SUPPLEMENTARY INFORMATION: Send comments or requests for further information to Mr. Albert J. Benjamin, Deputy Associate Regional Director, Office of Land Use Coordination, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: January 25, 1990.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

[FR Doc. 90-2277 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park 20013-7127. Written comments should be submitted by February 16, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Riverside County

Chinatown,
Brockton and Tequesquite Aves.,
Riverside, 90000151

CONNECTICUT

Fairfield County

First Baptist Church,
126 Washington Ave.,
Bridgeport, 90000154
Maplewood School,
434 Maplewood Ave.,
Bridgeport, 90000153
New Mill and Depot Building, Hawthorne Woolen Mill,
350 Pemberwick Rd.,
Greenwich vicinity, 90000152

Hartford County

Lewis-Zukowski House,
1095 S. Grand St.,
Suffield, 90000147

New Haven County

Hamden Bank & Trust Building,
1 Circular Ave.,
Hamden, 90000148

Tolland County

Cone, Jared, House,
25 Hebron Rd.,
Bolton, 90000155

FLORIDA

Clay County

Bubba Midden (8CL84),
Address Restricted,
Fleming Island vicinity, 90000159

GEORGIA

Thomas County

Pebble Hill Plantation,
US 319, 4 mi. SW of Thomasville,
Thomasville vicinity, 90000146

ILLINOIS

Montgomery County

Grubbs, Samuel Moody, House,
805 E. Union,
Litchfield, 90000156

IOWA

Cedar County

West Branch Commercial Historic District (Boundary Increase),
N. Downey and E. and W. Main Sts.,
West Branch 90000158

KANSAS

Neosho County

Tigoa Inn,
12 E. Main St.,
Chanute, 90000150

MASSACHUSETTS

Berkshire County

Westover-Bacon-Potts Farm,
MA 41, S. of South Egremont,
South Egremont, 90000157

Bristol County

Mason, William P., House
(Swansea MRA),
(5 Mason St.,
Swansea, 90000121

Middlesex County

Central Square Historic District
(Cambridge MRA),
Roughly Massachusetts Ave. from Clinton St. to Main St.,
Cambridge, 90000128
DeRosay-McNamee House
(Cambridge MRA),
50 Mt. Vernon St.,
Cambridge, 90000142
West Schoolhouse,
Shawsheen Ave. at Aldrich Rd.,
Wilmington, 90000144

Plymouth County

Middleborough Waterworks,
E. Grove St. at Nesmasket River and Wareham St. at Barden Hill Rd.,
Middleborough, 90000129

Worcester County

Brookfield Common Historic District,
Roughly Howard, Sherman, Prouty, W. Main, Main, and Upper River Sts.,
Brookfield, 90000161

MISSOURI

Daviess County

Daviess County Rotary Jail and Sheriff's Residence, 3109 W. Jackson, Gallatin, 90000131

Gentry County

Albany Carnegie Public Library, 101 W. Clay St., Albany, 90000130

MONTANA

Lewis and Clark County

Forestvale Cemetery, 490 Forestvale Rd., Helena, 90000145

NEVADA

Elko County

US Post Office—Elko Main (US Post Offices in Nevada MPS), 275 Third, Elko, 90000133

Humboldt County

US Post Office—Winnerucca Main (US Post Offices in Nevada MPS), 4th and Melarkey Sts., Winnemucca, 90000137

Lyon County

US Post Office—Yerington Main (US Post Offices in Nevada MPS), 28 N. Main St., Verington, 90000138

Nye County

US Post Office—Tonopah Main (US Post Offices in Nevada MPS), 201 Main St., Tonopah, 90000136

Pershing County

US Post Office—Lovelock Main (US Post Offices in Nevada MPS), 390 Main St., Lovelock, 90000134

Washoe County

US Post Office—Reno Main (US Post Offices in Nevada MPS), 50 S. Virginia St., Reno, 90000135

NEW MEXICO

Bernalillo County

Piedras Marcadas Pueblo (LA 290), Address Restricted, Albuquerque vicinity, 90000160

Luna County

US Post Office—Deming Main (US Post Offices in New Mexico MPS), 201 W. Spruce St., Deming, 90000139

Roosevelt County

US Post Office—Portales Main (US Post Offices in New Mexico MPS), 116 W. First St., Portales, 90000140

Sierra County

US Post Office—Truth or Consequences Main (US Post Offices in New Mexico MPS), 400 Main St., Truth or Consequences, 90000141

OKLAHOMA

Cleveland County

Casa Blanca, 103 W. Boyd, Norman, 90000123

Lincoln County

Bank of Agra, 400 Grant Ave., Agra, 90000122

Oklahoma County

Oklahoma Historical Society Building, 2100 Lincoln Blvd., Oklahoma City, 90000124

Sequoyah County

Baker "A" Archeological Site (34SQ269), Address Restricted, Short vicinity, 90000124
Starr Pasture Archeological Site (34SQ224), Address Restricted, Short vicinity, 90000126
Tall Cane Archeological Site (34SQ294), Address Restricted, Short vicinity, 90000127

RHODE ISLAND

Providence County

Tenner, Thomas, House, 43 Stony Acre Dr., Cranston, 90000143

WYOMING

Teton County

Squirrel Meadows Guard Station, Forest Rd. 20031, City Unavailable, 90000149

[FR Doc. 90-2278 Filed 1-31-90; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Notification Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on December 14, 1989, disclosing that there has been a change in the membership of PCA. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following are additional parties which have become members of PCA: BoxCrow Cement and CalMat Terminals, Inc.

In addition, CBR Cement Corporation is listed as a member company. Also, Southwestern Portland Cement Company is now listed as Southdown, Inc., and Tarmac-Lonestar is now listed as Tarmac Virginia Holdings, Inc.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, and September 25, 1989, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 26, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), and October 20, 1989 (54 FR 43146), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-2267 Filed 1-31-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Cardinal Maintenance & Service Co., Inc., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 10, 1990, a proposed Consent Order in *United States* v. *Cardinal Maintenance and Service Co., Inc. and Fairview General Hospital*, Civil Action No. C88-0338A, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Order resolves a judicial enforcement action brought by the United States against Cardinal Maintenance and Service Co., Inc. ("CMS") and Fairview General Hospital ("Fairview") under the Clean Air Act for alleged violations of the Clean Air Act and the National Emission Standard for Hazardous Air Pollutants (HESHAPs) for asbestos, during the removal of asbestos by CMS from a building owned by Fairview in August 1987.

The Consent Order requires both Defendants to achieve compliance with all asbestos NESHAPs requirements, and to report, periodically, to the U.S. Environmental Protection Agency, on their compliance with the terms of this Order in all asbestos demolition, renovation or removal operations subject to the asbestos standard. In addition, the Order requires CMS to institute and comply with an Asbestos Control Program and an Asbestos Training Program.

Under the Consent Order, the Defendants must demonstrate continued compliance for 18 months, and the Order provides for stipulated penalties for any noncompliance. In addition, the Consent Order provides that Defendants are liable for civil penalties of $7,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC and should refer to *United States* v. *Cardinal Maintenance & Service Co., Inc. and Fairview General Hospital*, D.J. #90-5-2-1-1199.

The proposed Consent Order may be examined at the office of the United States Attorney, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114, and at the Region V office of the U.S. Evironmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the Consent Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Steward,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-2266 Filed 1-31-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Allotments; Wagner-Peyser Act Preliminary Planning Estimates; Program Year (PY) 1990

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces States' Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1990 (July 1, 1990-June 30, 1991) for JTPA Titles II-A and III, and for the summer youth program in Calendar Year (CY) 1990 for JTPA Title II-B; and preliminary planning estimates for public employment service activities under the Wagner-Peyser Act for PY 1990.

FOR FURTHER INFORMATION CONTACT: For JTPA allotments, contact the Office of Employment and Training Programs, Room N4703, 200 Constitution Avenue, NW., Washington, DC. 20210; Telephone: 202–535–0577. For Employment Service planning levels contact Mr. Robert A. Schaerfl, Director, U.S. Employment Service, Room N4470, 200 Constitution Avenue, NW., Washington, D.C. 20210; Telephone: 202–535–0157. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is announcing Job Training Partnership Act (JTPA) allotments for Program Year (PY) 1990 (July 1, 1990-June 30, 1991) for JTPA Titles II–A and III, and for the summer youth program in Calendar Year (CY) 1990 for JTPA Title II–B; and, in accord with Section 6 of the Wagner-Peyser Act, preliminary planning estimates for public employment service (ES) activities under the Wagner-Peyser Act for PY 1990. The allotments and estimates are based on the appropriations of DOL for Fiscal Year (FY) 1989 and FY 1990.

Attached are a list of the allotments for PY 1990 for programs under JTPA Titles II–A and III, a list of the allotments for the CY 1990 summer youth program under Title II–B of JTPA, and a list of preliminary planning estimates for public employment service activities under the Wagner-Peyser Act. The PY 1990 allotments for Title II–A and III, and the ES preliminary planning estimates, are based on the funds appropriated by the Department of Labor Appropriations Act, 1990, Public Law 101–166, for FY 1990 and have been reduced by amounts sequestered by the recently revised Presidential Order as required by the Balanced Budget and Emergency Deficit Control Act of 1985 (commonly known as the Gramm-Rudman-Hollings law), and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239. The CY 1990 allotments for Title II–B are based on funds appropriated by the Department of Labor Appropriations Act, 1989, Public Law 100–436, for FY 1989.

These JTPA allotments will not be updated for subsequent unemployment data. The Employment Service preliminary estimates will be updated as final allotments to reflect CY 1989 data, and published in the **Federal Register** at a later date.

JTPA Title II-A Allotments. Attachment No. I shows the PY 1990 JTPA Title II–A allotments by State on a total appropriation of $1,744,808,000. The amount is composed entirely of PY 1990 formula funds. For all States, Puerto Rico, and the District of Columbia, the following data were used in computing the allotments:

—Data for areas of substantial unemployment (ASUs) are averages for the 12–month period, July 1988 through June 1989

—The number of excess unemployed individuals or the ASU excess (depending on which is higher) are averages for this same 12–month period.

—The economically disadvantaged data are from the 1980 Census

The allotments for the Insular Areas, including the Freely Associated States, are based on estimated unemployment. The estimated unemployment data were developed using the 1980 Decennial Census unemployment data as a base, updated according to relative shifts in the population. A 90-percent relative share "hold-harmless" of the Title II–A allotments for these areas and a minimum allotment of $125,000 were also applied in determining the allotments.

PV 1990 Title II–A funds are to be distributed among designated Service Delivery Areas (SDAs) according to the statutory formula contained in Section 202(a) of JTPA, as amended.

JTPA Title II–B Allotments. Attachment No. II shows the CY 1990 JTPA Title II–B Summer Youth Program allotments by State based on a total FY 1989 available appropriation of $709,433,000. The data used for these allotments are the same data as were used for title II–A allotments. The amount allotted is composed entirely of PY 1989 formula funds.

For the Insular Areas, the amount is based on the percentage of title II–B funds each area received during the previous summer.

CY 1989 title II–B funds are to be distributed among designated SDAs in accordance with the statutory formula contained in Section 202(a) of JTPA, as amended.

JTPA Title III Allotments. Attachment No. III shows the PY 1990 JTPA Title III Dislocated Worker Program allotments by State, on a total appropriation of $463,603,000. The total appropriation includes 80 percent allotted by formula to the States ($371,868,186), and 20 percent for the National Reserve, including funds allotted to the Insular Areas.

Title III formula funds are to be distributed to State and substate grantees in accordance with the provisions in Section 302 (c) and (d) of JTPA. There are no matching requirements that apply to these funds as there had been prior to PY 1989.

Except for the Insular Areas, the unemployment data used for computing these allotments, relative numbers of unemployed and relative numbers of excess unemployed, are averages for the September 1988 through August 1989 period. Long-term unemployed data used were for CY 1988.

Allotments for the Insular Areas are based on the proportion of title II–A funds these jurisdictions received.

A reallotment of these published title III formula amounts, as provided for by Section 303 of JTPA will be completed on or about October 1, 1990, based on expenditure reports submitted by the States. Title III allotments will be adjusted upward or downward, based on whether the State is eligible to share in reallotted funds or is subject to recapture.

Wagner-Peyser Act Employment Service Preliminary Planning Estimates. Attachment No. IV shows preliminary ES planning estimates which have been produced using the formula set forth at Section 6 of the Wagner-Peyser Act. 29 U.S.C. 49e. These estimates are based on preliminary averages for the most current 12 months ending September 1989 for each State's share of the civilian labor force (CLF) and unemployment. Final planning estimates will be issued within 90 days, based on CY 1989 data, as required by the Wagner-Peyser Act.

The total amount allotted reflects $15,580,780, or 2 percent of the total amount available, withheld from distribution to finance postage costs associated with the conduct of Employment Service business.

While objectives for allocating the Secretary of Labor's 3 percent setaside are unchanged from the prior year, a technical change has been made in the formula. As in previous years, in order to qualify, a State must have lost in its relative share of resources from the prior year. In the past, however, a State's relative share (before distribution of the 3 percent setaside) was compared to its relative share of the former year's total resources to determine whether or not it was a "losing" State. The technical change now determines a State's relative share by allocating 97 percent of the total availability distribution to the States, under the Wagner-Peyser base formula, and comparing each State's allocation to 100 percent of the current available resources. This relative share standing is compared to the previous year's relative share in order to determine "losing" States. In following this formula any shifting in each State's relative share of the final preliminary planning

estimate will be minimized; thus creating a more equitable distribution of resources. For those "losing" States with a CLF of less than one million that are also below the national median labor force density, the 3 percent formula assures a 100 percent restoration of prior year's share of resources in Step 1 of this administrative formula. All remaining funds of the 3 percent setaside are distributed on a pro rata basis in Step 2 to States that lost in relative share but did not meet the size criteria described for Step 1. In earlier years, this remainder was provided only to those States with relative share losses in the basic formula computations as compared to shares of the prior year's total allotment. These preliminary planning estimates provide a pro rata restoration to any State that would have lost in relative shares when comparing its share of the *total* preliminary planning estimate to its share of the total allotment in the prior year.

Ten percent of the total sums allotted to each State shall be reserved for use by the Governor to provide performance incentives for public employment service offices; services for groups with special needs; and for the extra costs of exemplary models for delivering job services.

Signed at Washington, DC, this 25th day of January, 1990.

Roberts T. Jones,

Assistant Secretary of Labor.

ATTACHMENT I.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1990 JTPA TITLE II-A ALLOTMENTS TO STATES

	Allotment
Alabama	43,986,519
Alaska	6,321,240
Arizona	27,074,268
Arkansas	27,072,424
California	187,267,514
Colorado	27,242,961
Connecticut	8,352,775
Delaware	4,350,457
District of Columbia	4,766,796
Florida	75,802,268
Georgia	41,949,484
Hawaii	4,350,457
Idaho	8,262,250
Illinois	90,074,151
Indiana	28,898,024
Iowa	15,116,842
Kansas	8,286,487
Kentucky	38,463,704
Louisiana	68,292,225
Maine	5,389,500
Maryland	19,495,320
Massachusetts	18,042,592
Michigan	89,427,872
Minnesota	18,508,029
Mississippi	36,308,134
Missouri	35,826,656
Montana	7,230,576
Nebraska	5,561,962
Nevada	5,781,084
New Hampshire	4,350,457
New Jersey	28,794,338
New Mexico	15,664,699
New York	105,721,616
North Carolina	24,253,694
North Dakota	4,350,457
Ohio	70,621,785
Oklahoma	24,490,092
Oregon	19,035,945
Pennsylvania	62,804,276
Puerto Rico	78,793,319
Rhode Island	4,350,457
South Carolina	17,909,869
South Dakota	4,350,457
Tennessee	37,725,546
Texas	153,037,668
Utah	8,415,520
Vermont	4,350,457
Virginia	26,796,525
Washington	34,489,505
West Virginia	22,331,538
Wisconsin	25,691,416
Wyoming	4,350,457
American Samoa	172,078
Guam	1,160,554
Marshall Islands	492,755
Micronesia	1,160,006
Northern Marianas	125,000
Palau	125,000
Virgin Islands	1,389,921
National Total	1,744,808,000

ATTACHMENT I.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1990 JTPA TITLE II-A ALLOTMENTS TO STATES—Continued

ATTACHMENT II.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 JPTA TITLE II-B ALLOTMENTS TO STATES

	Allotment
Alabama	17,272,076
Alaska	2,468,313
Arizona	10,627,926
Arkansas	10,623,362
California	73,674,919
Colorado	10,667,168
Connecticut	5,318,107
Delaware	1,738,376
District of Columbia	4,406,579
Florida	29,811,859
Georgia	16,532,653
Hawaii	1,738,376
Idaho	3,220,771
Illinois	35,333,080
Indiana	12,116,538
Iowa	5,787,132
Kansas	3,292,421
Kentucky	15,106,190
Louisiana	26,694,113
Maine	2,143,858
Maryland	7,701,952
Massachusetts	11,065,167
Michigan	35,016,367
Minnesota	7,318,422
Mississippi	14,243,145
Missouri	14,089,030
Montana	2,843,128
Nebraska	2,163,891
Nevada	2,252,673
New Hampshire	1,738,376

ATTACHMENT II.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION, PY 1989 JPTA TITLE II-B ALLOTMENTS TO STATES—Continued

	Allotment
New Jersey	14,361,750
New Mexico	6,155,089
New York	41,808,398
North Carolina	9,695,044
North Dakota	1,738,376
Ohio	27,528,965
Oklahoma	9,621,051
Oregon	7,489,746
Pennsylvania	23,867,895
Puerto Rico	31,053,524
Rhode Island	1,938,828
South Carolina	6,993,382
South Dakota	1,738,376
Tennessee	14,853,156
Texas	59,944,324
Utah	3,283,159
Vermont	1,738,376
Virginia	10,590,742
Washington	13,437,350
West Virginia	8,750,006
Wisconsin	10,018,364
Wyoming	1,738,376
American Samoa	53,856
Guam	656,835
Marshall Islands	19,356
Micronesia	45,871
Northern Marianas	25,193
Palau	7,596
Virgin Islands	372,434
Native Americans	12,901,614
National total	709,433,000

ATTACHMENT III.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 JTPA TITLE III ALLOTMENTS TO STATES

	Allotment
Alabama	10,556,916
Alaska	1,715,835
Arizona	5,563,787
Arkansas	6,276,852
California	33,650,395
Colorado	7,046,862
Connecticut	1,941,298
Delaware	367,807
District of Columbia	810,613
Florida	15,409,064
Georgia	9,439,179
Hawaii	516,522
Idaho	1,252,165
Illinois	22,845,352
Indiana	4,610,943
Iowa	2,440,442
Kansas	2,011,325
Kentucky	8,995,313
Louisiana	19,213,068
Maine	730,075
Maryland	3,538,508
Massachusetts	3,432,783
Michigan	24,571,517
Minnesota	3,499,322
Mississippi	8,148,703
Missouri	8,191,242
Montana	1,694,449
Nebraska	933,313
Nevada	1,329,775
New Hampshire	473,189

ATTACHMENT III.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 JTPA TITLE III ALLOTMENTS TO STATES—Continued

	Allotment
New Jersey	5,213,270
New Mexico	3,475,608
New York	17,046,607
North Carolina	3,877,627
North Dakota	586,875
Ohio	18,094,923
Oklahoma	6,025,032
Oregon	3,955,470
Pennsylvania	11,301,340
Puerto Rico	14,824,715
Rhode Island	495,421

ATTACHMENT III.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 JTPA TITLE III ALLOTMENTS TO STATES—Continued

	Allotment
South Carolina	2,420,807
South Dakota	572,328
Tennessee	6,697,973
Texas	39,866,018
Utah	1,158,707
Vermont	263,000
Virginia	3,845,767
Washington	7,939,661
West Virginia	6,343,038
Wisconsin	4,663,636
Wyoming	1,007,963

ATTACHMENT III.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PY 1990 JTPA TITLE III ALLOTMENTS TO STATES—Continued

	Allotment
American Samoa	36,675
Guam	247,347
Marshall Islands	105,020
Micronesia	247,230
Northern Marianas	26,641
Palau	26,641
Virgin Islands	296,232
National Reserve	91,734,814
National total	463,603,000

ATTACHMENT IV.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1990 WAGNER-PEYSER ALLOTMENTS TO STATES

	Basic formula	3 percent Distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Alabama	12,083,910	0	0	0	12,083,910
Alaska	7,244,616	1,054,540	0	1,054,540	8,299,156
Arizona	9,788,429	0	0	0	9,788,429
Arkansas	7,240,616	0	49,328	49,328	7,289,944
California	78,569,307	0	0	0	78,569,307
Colorado	9,876,894	0	204,286	204,286	10,081,180
Connecticut	8,588,388	0	0	0	8,588,388
Delaware	2,068,342	0	64,130	64,130	2,132,472
District of Columbia	4,830,839	0	497,642	497,642	5,328,481
Florida	35,061,376	0	0	0	35,061,376
Georgia	18,410,960	0	0	0	18,410,960
Hawaii	2,584,868	0	266,276	266,276	2,851,144
Idaho	6,036,053	878,620	0	878,620	6,914,673
Illinois	34,295,600	0	461,170	461,170	34,756,770
Indiana	15,298,076	0	279,246	279,246	15,577,322
Iowa	8,249,125	0	849,770	849,770	9,098,895
Kansas	6,826,282	0	38,722	38,722	6,865,004
Kentucky	10,530,632	0	299,968	299,968	10,830,600
Louisiana	13,675,328	0	407,448	407,448	14,082,776
Maine	3,589,584	522,507	0	522,507	4,112,091
Maryland	12,922,454	0	72,334	72,334	12,994,788
Massachusetts	16,024,548	0	0	0	16,024,548
Michigan	28,638,930	0	239,610	239,610	28,878,540
Minnesota	12,233,345	0	0	0	12,233,345
Mississippi	7,770,194	0	224,237	224,237	7,994,431
Missouri	14,747,877	0	19,224	19,244	14,767,121
Montana	4,932,695	718,012	0	718,012	5,650,707
Nebraska	5,928,129	862,910	0	862,910	6,791,039
Nevada	4,795,098	697,984	0	697,984	5,493,082
New Hampshire	2,960,024	0	0	0	2,960,024
New Jersey	20,460,719	0	0	0	20,460,719
New Mexico	5,535,350	805,736	0	805,736	6,341,086
New York	49,776,633	0	5,127,659	5,127,659	54,904,292
North Carolina	17,187,397	0	0	0	17,187,397
North Dakota	5,022,958	731,151	0	731,151	5,754,109
Ohio	30,536,355	0	248,869	248,869	30,785,224
Oklahoma	11,381,050	0	1,172,400	1,172,400	12,553,450
Oregon	8,072,990	0	743,292	743,292	8,816,282
Pennsylvania	31,048,989	0	489,336	489,336	31,538,325
Puerto Rico	9,365,869	0	0	0	9,365,869
Rhode Island	2,651,422	0	38,772	38,772	2,690,194
South Carolina	9,027,757	0	0	0	9,027,757
South Dakota	4,642,368	675,752	0	675,752	5,318,120
Tennessee	13,209,461	0	174,781	174,781	13,384,242
Texas	50,652,021	0	758,678	758,678	51,410,699
Utah	10,153,424	1,477,952	0	1,477,952	11,631,375
Vermont	2,174,752	316,561	0	316,561	2,491,313
Virginia	15,742,036	0	916	916	15,742,952
Washington	13,697,597	0	0	0	13,697,597
West Virginia	5,313,649	773,465	0	773,465	6,087,114
Wisconsin	13,636,338	0	136,162	136,162	13,772,500
Wyoming	3,601,774	524,281	0	524,281	4,126,055

ATTACHMENT IV.—U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION PRELIMINARY PY 1990 WAGNER-PEYSER ALLOTMENTS TO STATES—Continued

	Basic formula	3 percent Distribution			Total allotment [3]
		Step 1 [1]	Step 2 [2]	Total	
Formula total	738,693,427	10,039,471	12,864,276	22,903,747	761,597,174
Guam	357,239	0	0	0	357,239
Virgin Islands	1,503,807	0	0	0	1,503,807
Indicia Postage	15,580,780	0	0	0	15,580,780
National total	756,135,253	10,039,471	12,864,276	22,903,747	779,039,000

[1] Funds are allocated to the 13 States whose relative share decreased from PY 1989 to the PY 1990 basic formula amount and which have a civilian labor force (CLF) below one million and are below the median CLF density. These States are held harmless at 100 percent of their PY 1989 relative share.
[2] The balance of the 3 percent funds are distributed to the remaining 25 States losing in relative share from PY 1989 to the PY 1990 total allotment amount.
[3] Hold harmless provisions required under section 6(b) of the Wagner-Peyser Act, as amended, are maintained at the revised allotment level.

[FR Doc. 90-2167 Filed 1-31-90; 8:45 am]
BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-155]

Consumers Power Co., Big Rock Point Plant; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that a petition dated November 11, 1989, filed by Mrs. Jo Anne Bier Beemon on behalf of the Concerned Citizens for the Charlevoix Area, Charlevoix, Michigan, has requested that the Commission take action to require Consumers Power Company to meet all current NRC design and safety criteria for the Big Rock Point Plant located near Charlevoix, Michigan. The petition alleges that the NRC and Consumers Power Company, in corroboration, have improperly used cost/benefit criteria in the following instances in regard to the Big Rock Point Plant—grandfathering, probabilistic risk assessment, application of the as-low-as-reasonably-achievable standard, authorization of the experimental status of the facility, and low societal risk—to defer the implementation of current NRC safety criteria, thus resulting in indefensibly large radioactive emissions from the Big Rock Point Plant.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.
Dated: January 24, 1990.

Frank P. Gillespie,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 90-2230 Filed 1-31-90; 8:45 am]
BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified as DG-8001, is titled "Basic Quality Assurance Program for Medical Use" and is intended for Division 8, "Occupational Health." This guide is being developed to provide guidance to medical use licensees on a basic quality assurance program acceptable to the NRC staff. The NRC recently issued proposed amendments to 10 CFR part 35, "Medical Use of Byproduct Material," on a quality assurance program. The associated proposed amendments have been printed with the draft guide because they are so closely interrelated.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It does not represent a final NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by April 12, 1990. Although a time limit is given for comments on this draft guide, comments and suggestions received after this date will be considered if it is practicable to do so.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

Dated at Rockville, Maryland, this 24th day of January 1990.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office Of Nuclear Regulatory Research.

[FR Doc. 90-2339 Filed 1-31-90; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-5 and 50-251-OLA-5, Technical Specifications Replacement; ASLBP No. 90-602-01-OLA-5]

Florida Power and Light Co.; Establishment of Atomic Safety and Licensing Board To Preside In Proceeding

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2,714, 2,714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, and 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.

Florida Power and Light Company

Turkey Point Plant, Unit Nos. 3 and 4
Facility Operating Licenses Nos. DPR-31 and DPR-41

This Board is being established pursuant to a Notice published by the Commission on December 5, 1989 in the Federal Register (54 FR 50295) entitled, "Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing." The proposed amendments would replace the current custom Technical Specifications (TS) licensed in the early 1970's with a set of TS based on the Westinghouse Standard Technical Specifications (STS).

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

George C. Anderson, 7719 Ridge Drive, NE., Seattle, Washington 98115.

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 24th day of January 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 90-2337 Filed 1-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250-OLA-4 & 50-251-OL-4]

Florida Power and Light Co. (Turkey Point Plant, Units 3 and 4); Assignment of Atomic Safety and Licensing Appeal Board

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 license amendment proceeding: Christine N. Kohl, Chairman, Thomas S. Moore, Howard A. Wilber.

Dated: January 25, 1990.

Eleanor E. Hagins,

Secretary to the Appeal Board.

[FR Doc. 90-2338 Filed 1-31-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp.; Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specifications 2.3.F and 4.3.E. Specifically, the changes would eliminate eight main steam safety valves (safety valves) by taking credit for high flux reactor scram in the safety analysis. Section 2.3.F and 4.3.E would be revised to delete eight safety valves with the two highest setpoints. The bases for § 2.3 would also be revised to incorporate credit for reactor scram for safety valve sizing and change the total number of safety valves from sixteen to eight.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By March 2, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert

opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 200 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 18, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 24th day of January 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–2229 Filed 1–31–90; 8:45 am]

BILLING CODE 7590–1

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Revisions to U.S. Patent Enforcement Procedures; Section 337: Request for Public Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written comments from the public on possible amendments to section 337 of the Tariff Act of 1930, as amended, and other relevant statutes.

SUMMARY: The Uruguay Round of negotiations on trade-related aspects of intellectual property (TRIPs) and the General Agreement on Tariffs and Trade (GATT) panel report on section 337 of the Tariff Act of 1930, as amended, provide an incentive and opportunity to improve the current mechanism for enforcement of patent rights under U.S. law. We seek comments on proposed approaches for consideration in preparing possible legislative amendments to section 337 and other relevant laws.

DATES: Submissions must be received at USTR on or before 12 noon on Friday, March 26, 1990.

ADDRESSES: 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Catherine Field, Associate General Counsel, Office of the United States Trade Representative, (202) 395–3432. For information on filing submissions or obtaining a copy of a detailed paper discussing the various approaches contact, Dorothy Balaban, Office of the United States Trade Representative, (202) 395–6800.

SUPPLEMENTARY INFORMATION: USTR believes that the current system for patent enforcement in the United States could be improved in ways that would facilitate procedures, provide more comprehensive relief in a single action and also bring the United States into conformity with its international obligations. The following is a very brief description of proposed approaches: (1) Congress could create a specialized trial-level patent court empowered to hear all patent-related litigation and amend section 337 to provide that patent-based complaints be brought before the new court. Congress could grant this patent court the authority to issue limited and general exclusion orders, temporary exclusion orders (TEOs) and temporary cease and desist orders (TCDs). These authorities would be in addition to the powers exercised by other Article III courts. (2) Congress could create a new division of the CIT which would have jurisdiction over section 337 patent-based actions and collateral claims (patent litigation not involving imports would continue to be heard in the district courts). The new division of the CIT could have the authority to issue limited and general exclusion orders, TEOs, and TCDs and exercise all other Article III authorities. Rules would provide for consolidation of related court actions such as declaratory judgments requests into a single proceeding. (3) Congress could provide for transfer of patent-based section 337 cases to a specialized division of the CIT or to designated district courts at the request of the respondents in the section 337 action. Further amendments to section 337 could provide a procedure whereby the patent owner could obtain damages from the court after a USITC patent-based section 337 proceeding without a de novo hearing by the court on patent infringement issues. Rules on consolidation of actions would also be part of this approach. (4) Congress could enact a variation on the transfer approach described above that would permit transfer of a patent-based section 337 action to court after a USITC hearing on preliminary relief. The portion of the proceeding heard before the USITC would be subject to statutory deadlines and presidential review. Rules on obtaining damages and consolidation of court actions would be the same as

those described above. (5) Congress could amend section 337 to provide for transfer of patent-based section 337 cases to court for a hearing on those issues that cannot be adjudicated by the USITC, e.g., damage claims and counterclaims. Transfer would occur after the USITC determined whether there is a violation of section 337 in the importation of goods that infringe a valid and enforceable U.S. patent and decided whether to issue TEO and/or TCD orders.

Members of the public who are interested in commenting on these and any other approaches should request a copy of a more detailed paper discussing each approach and its rationale from the Office of USTR. We request that submissions address both broad issues of the effect of each proposed approach on the overall system of patent enforcement as well as the details of any or all of the proposed approaches. Has this paper identified those elements necessary and important for effective patent enforcement? If not, what are those elements and how should they be addressed in light of the objectives of this review? What are the constitutional, other legal, and administrative implications of various approaches for the Federal judiciary and the USITC? Submissions should also address whether a particular approach is practicable; whether there are legal or procedural obstacles that have not been identified or appropriately addressed; and whether a particular approach would appropriately address issues raised in the GATT panel. Are there other approaches worth considering?

Requirements for Submissions

USTR invites submissions discussing proposed approaches to amending section 337 and other relevant statutes. Members of the public may obtain a copy of the detailed paper and the GATT panel report on section 337 from Dorothy Balaban, Office of the General Counsel, room 222, 600 17th Street NW., Washington, DC 20506.

Interested persons must provide twenty copies of their submission to Dorothy Balaban, Office of the U.S. Trade Representative, no later that 12 noon on Monday, March 26, 1990.

Joshua B. Bolten,
General Counsel.

[FR Doc. 90-2224 Filed 1-31-90; 8:45 am]
BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27644; File No. SR-DTC-89-22]

Self-Regulatory Organizations; Proposed Rule Change by The Depository Trust Company, Relating to Access to the Mutual Fund Settlement, Entry and Registration Verification Service

January 25, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1989, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. On January 10, 1990, DTC amended its proposal, to include a fee schedule for the proposed service. The Commission is publishing this notice to solicit comments from interested persons, on the proposed rule change and fee schedule.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is filing herewith a proposed rule change relating to DTC's interface with the National Securities Clearing Corporation's ("NSCC") Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"). The proposed rule change would enable NSCC members who are not direct Fund/SERV Participants to access the Fund/SERV system through DTC's Participant Terminal System ("PTS" and "PTS, Jr."). In addition, DTC proposes to charge $0.25 for each transaction involving an order entry, settlement or registration and a monthly usage charge of $5.00.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide NSCC Participants who are not direct participants in NSCC's Fund/SERV with access to Fund/SERV, via DTC's PTS.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in trade executions, settlements and redemptions of mutual fund securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC's user advisory committee—formed to assist DTC in developing interfaces with NSCC's Fund/SERV and Networking services—has supported the proposed rule change. Committee members include representatives from DTC, its bank and broker participants, NSCC, Bank Depository User Group, New York Clearing House Association, Investment Company Institute, and load and no-load mutual funds.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-DTC-89-22 and should be submitted by February 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-2365 Filed 1-31-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27564; File No. SR-NSCC-89-20]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by the National Securities Clearing Corporation Regarding Modifications to Its Networking Rules

December 21, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1989, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below. Items II and III have been prepared by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC's proposal would amend Rule 52, section 17 of its Rules, regarding Networking, in order to modify the processing of automated settlement of dividend payments associated with the Mutual Fund Settlement, Entry and Registration Verification Service ("Fund/SERV"). A copy of the proposed rule change is contained in the proposal that is on file with, and available from, the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to modify the Networking rules which pertain to the automated settlement of dividends in order to allow NSCC to accept dividend data with any payable date. Currently, NSCC's rules specify that if data is received from a Mutual Fund or Mutual Fund Processor which contains a payable date that is not a valid NSCC settlement date, that date will be rejected, and the Mutual Fund or Mutual Fund Processor will be required to resubmit the date with a new valid payable date.

This procedure was developed for processing efficiency. Settlement of dividends through Networking was initiated on September 29, 1989. After its initiation, it was recognized that Mutual Funds declare payable dates which are not necessarily NSCC settlement dates. For accounting and legal reasons, the Mutual Funds do not want to, and in some cases are unable to, change the payable date merely to meet NSCC's processing capabilities.

NSCC has, therefore, determined to modify its system in order to accept dividend data with any payable date. If data is received with a payable date that is not an NSCC settlement date, settlement of these items will occur on the next NSCC settlement date after the payable date submitted. The proposed rule change also corrects the definition of Dividend Payable Date as set forth in the previous filing to clarify that it is an NSCC business day on which banks in New York are open for business.

(b) The proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions by providing for the settlement, on an automated basis, of dividend payments between Mutual Funds and brokerage firms. The rule change, therefore, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(e), because it effects a change in an existing service, which change neither adversely affects the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible, nor affects the respective rights or obligations of NSCC or persons using the service.

At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such

filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR–NSCC–89–20 and should be submitted within February 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–2366 Filed 1–31–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25030]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 25, 1990.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 20, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company (70–7482)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York 10112, a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By prior Commission order, dated March 11, 1988 (HCAR No. 24598), National was authorized to repurchase and retire, in open market transactions through March 10, 1990, up to $25 million of its issued and outstanding shares of common stock, no par value. No shares were repurchased.

National now requests authorization to repurchase up to $50 million of its issued and outstanding shares of common stock, no par value, in open market transactions from time to time during a two-year period beginning from the date a new order is issued by the Commission herein. Purchases would be made only if National determined that it was in its best interest to do so. Funds for such purchases would be obtained from internal sources. If National repurchased shares of common stock at a cost of $50 million, National's consolidated common equity to total capitalization percentage would be reduced from 54.7% to 51.9%, as of September 30, 1989. Shares of common stock purchased will, by operation of the laws of New Jersey, the state of National's incorporation, automatically be cancelled and restored to the status of authorized but unissued shares of common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–2258 Filed 1–31–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–5213]

Milestone Growth Fund, Inc.; Issuance of a Small Business Investment Company License

On September 28, 1989, a notice was published in the **Federal Register** (54 FR 39620) stating that an application has been filed by Milestone Growth Fund, Inc., with the Small Business Administration (SBA) pursuant § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) for a license as a small business investment company.

Interested parties were given until close of business October 27, 1989, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–5213 on December 27, 1989, to Milestone Growth Fund, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 22, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90–2294 Filed 1–31–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Order Instituting Brazil Cargo Charter Authorization Proceeding (1990/1991)

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Institution of the Brazil Cargo Charter Authorization Proceeding (1990/1991): Order 90–1–49. Docket 46755.

SUMMARY: Under a March 1989 agreement between the United States and Brazil, U.S. carriers may operate up to 150 round-trip all-cargo charters between the United States and Brazil during the period April 1, 1990, and March 31, 1991. The Department has instituted a show-cause proceeding to determine how these flights should be allocated among U.S. carriers. The Department is inviting interested U.S. carriers to file applications to operate the Brazil charters at issue.

DATES: Applications (including service proposals and supporting information) and petitions for reconsideration or Order 90–1–49 are due February 9, 1990; answers thereto are due February 16, 1990.

ADDRESSES: Applications, supporting information, petitions for reconsideration should be filed in Docket 46755, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should also be served on Mr. Robert Goldner, (P–7), Room 9216, and the Licensing Division, (P–45), Room 6412, at the same address.

Dated: January 25, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–2257 Filed 1–31–90; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Docket No. 45928; Notice No. 90-2]

Procedures for Transportation; Workplace Drug Testing Programs

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Suspension of a Laboratory Which No Longer Meets Minimum Standards to Engage in Urine Drug Testing.

SUMMARY: The Department of Transportation recently adopted a final rule concerning testing procedures applicable to drug testing programs the Department requires in six transportation industries. The Department requires that employers use only laboratories certified under the Department of Health and Human Services (DHHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988. This notice concerns HHS suspension of a laboratory [1], with the result that it may not be used for DOT-mandated drug testing.

EFFECTIVE DATES: This notice is effective January 30, 1990.

FOR FURTHER INFORMATION CONTACT: Donna Smith, Program Analyst, Drug Awareness and Education Division, Office of the Assistant Secretary for Administration, Department of Transportation, 400 7th Street, SW, Room 10424, Washington, DC 20590. (202-366-6000).

SUPPLEMENTARY INFORMATION: Effective January 24, 1990, the DHHS has suspended the following laboratory for failing to meet DHHS minimum standards for engaging in urine drug testing: Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chase, LA 70037, 504-392-7961.

For this reason, employers regulated by DOT may no longer use this laboratory for testing urine samples under DOT drug testing rules. Any employers subject to these regulations which are presently using the laboratory should take immediate steps to have their testing done by another laboratory which is certified by DHHS, since tests performed by Laboratory Specialists, Inc., no longer met the requirements of DOT rules.

We also recommend that, to safeguard the integrity of testing under the DOT regulations, that positive tests received by employers from Laboratory Specialists, Inc., since December 21, 1989, be retested at another DHHS-certified laboratory. These retests, as with other retests under 49 CFR Part 40, would be only for the presence of the drug(s) for which a positive test was reported.

Issued this 29th day of January, 1990, at Washington, DC.

Melissa J. Allen,

Deputy Assistant Secretary for Administration.

[FR Doc. 90-2442 Filed 1-31-90; 8:45 am]

BILLING CODE 4910-62-M

[1] See 55 FR 3107, January 30, 1990.

Federal Highway Administration

Environmental Impact Statement; Fayette County, PA, Monongalia County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project affecting parts of Fayette County, Pennsylvania and Monongalia County, West Virginia.

FOR FURTHER INFORMATION CONTACT: In Pennsylvania; George J. Catselis, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-3411. William L. Beaumariage, P.E., District Engineer, District 12-0, Pennsylvania Department of Transportation, P.O. Box 459, North Gallatin Avenue Extension, Uniontown, Pennsylvania 15401, Telephone: (412) 439-7259. John L. Sokol, Jr., P.E., Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 8531, Harrisburg, Pennsylvania 17105, Telephone: (717) 939-9551.

In West Virginia; Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 23301, Telephone: (304) 347-5928; and Randy Epperly, Division Director, Roadway Design Division, West Virginia Department of Highways, State Capitol Complex, Building 5, Charleston, West Virginia 25305, Telephone: (304) 348-2990.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Turnpike Commission (PTC), the West Virginia Department of Highways, and the Pennsylvania Department of Transportation (PennDOT), will prepare an environmental impact statement (EIS) for the construction of a new multi-lane, limited access, toll road. The proposed toll road would begin at the U.S. 119 bypass in the vicinity of Uniontown, Pennsylvania. The corridor proceeds south, generally parallel to State Route 857, ending near Lakeview, West Virginia, east of Cheat Lake at U.S. 48. The corridor may include the Chadville Demonstration Project, between Hopwood and Fairchance, as a toll-free roadway. Approximate length of the proposed highway would be 16 miles.

This proposed highway project would be one section of a proposed tolled highway extending from the City of Pittsburgh south to U.S. Route 48 in West Virginia. This proposed highway has been designated by the Governor as the Commonwealth of Pennsylvania's Pilot Toll Facility in which Federal aid will be permitted as provided in section 120 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987. As such, its purpose is to support and to encourage economic development and redevelopment of the Monongahela Valley Region and Fayette County. FHWA has determined that this section of the proposed Pilot Toll Facility: (a) connects logical termini and is of sufficient length to address environmental matters on a broad scope; (b) has independent utility; and (c) will not restrict consideration of alternatives for other sections of the facility. Alternatives under consideration include (1) taking no action; (2) constructing a multi-lane, controlled access, tolled highway on a new location. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment. The north part of this proposed highway project has a common corridor with a soon to be reconstructed section of Traffic Route 119. The common corridor begins at the existing U.S. 119 bypass near Uniontown at Chadville and extends approximately 4.3 miles south to Fairchance. This proposed four-lane relocated section of T.R. 119 is being advanced on the basis of a previously completed EIS which is presently under reevaluation. This 4.3 mile section will be funded as a Federal Demonstration Project under the provisions of section 149 of the 1987 STURAA. The EIS for the 16 mile section of the proposd Pilot Toll Facility will consider the Chadville Demonstration Project as a completed facility which is available for inclusion as a free-of-tolls section in a build alternative for the Pilot Toll Facility (Mon-Fayette Expressway).

The following environmental areas will be investigated for EIS preparation: Traffic; air quality; noise and vibrations; surface water resources; aquatic environments; floodplains, groundwater; soils and geology; wetlands; vegetation

and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities; historic and archaeological structures and sites; section 4(f) evaluation; and wild and scenic rivers. Letters describing the proposed EIS Plan of Study (POS) and soliciting comment will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who express interest in the project. Public meetings will be held in the area during the Spring of 1990 and winter of 1991. Public notices of the time and place of these meetings and any required public hearings will be given in a timely fashion. Public involvement and interagency coordination will be maintained throughout the development of the EIS. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above. (Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal program and activities apply to this program.)

Issued on: January 24, 1990.

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 90-2340 Filed 1-31-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 26, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545-0213.
Form Number: 5578.
Type of Review: Extension.
Title: Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.
Description: Form 5578 is used by private schools that do not file Form 990, Schedule A, to certify that they have a racially nondiscriminatory policy toward students, as outlined in Rev. Proc. 75-50. The Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy, in keeping with its exempt status.
Respondents: Non-profit institutions.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response: Recordkeeping, 2 hours, 52 minutes. Learning about the law or the form, 53 minutes. Preparing and sending the form to IRS, 59 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 4,750 hours.

OMB Number: 1545-0819.
Form Number: None.
Type of Review: Extension.
Title: Instructions for Requesting Rulings and Determination Letters.
Description: The National Office issues ruling letters and District Directors issue determination letters to taxpayers interpreting and applying the tax laws to a specific set of facts. The National Office also issues other types of letters. The procedural regulations set forth the instructions for requesting ruling and determination letters.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 271,914.
Estimated Burden Hours Per Response: 3 hours, 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 248,496 hours.

OMB Number: 1545-0854.
Form Number: None.
Type of Review: Extension.
Title: Discharge of Liens.
Description: The Internal Revenue Service needs this information to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 24 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 200 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. 90-2299 Filed 1-31-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 24, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0280
Form Number: RCMW-1-709
Type of Review: Extension
Title: Congressional Consent Form
Description: Internal Revenue Code 6103(c) and regulations thereunder require that tax information can only be given to a designee of a taxpayer if a proper consent is granted. This form is used to assist members of Congress in assuring that they have proper consent before they seek assistance from the IRS on behalf of their constituents. Data is used to identify the tax information authorized to be disclosed.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,000
Estimated Burden Hours Per Response: 10 minutes

Frequency of Response: On occasion
Estimated Total Reporting Burden: 166 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 Managment and Budget Room 3001, New Executive Office Building Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90–2260 Filed 1–31–90; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

[Supplement to Dept. Circ.—Public Debt Series—No. 2–90]

Treasury Notes, Series V–1992

Washington, January 25, 1990.

The Secretary announced on January 24, 1990, that the interest rate on the notes designated Series V–1992, described in Department Circular—Public Debt Series—No. 2–90 dated January 18, 1990, will be 8⅛ percent. Interest on the notes will be payable at the rate of 8⅛ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 90–2374 Filed 1–31–90; 8:45 am]

BILLING CODE 4810–40–M

Office of Thrift Supervision

American Federal Savings Bank, Sanford, ME; 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 American Federal Savings Bank, Sanford, Maine ("Savings Bank") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2303 Filed 1–31–90; 8:45 am]

BILLING CODE 6720–01–M

Atlantic Financial Savings, F.A., Bala Cynwyd, PA; 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 Atlantic Financial Savings, F.A., Bala Cynwyd, Pennsylvania ("Association") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2304 Filed 1–31–90; 8:45 am]

BILLING CODE 6720–01–M

Brookhaven Federal Savings and Loan Association, Brookhaven, MS; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Brookhaven Federal Savings and Loan Association; Brookhaven, Mississippi ("Association"), on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2305 Filed 1–31–90; 8:45 am]

BILLING CODE 6720–01–M

Certified Federal Savings Association, Georgetown, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act 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 Certified Federal Savings Association, Georgetown, Texas ("Association"), on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2306 Filed 1–31–90; 8:45 am]

BILLING CODE 6720–01–M

Colonial Federal Savings Association, Prairie Village, IL; 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 Colonial Federal Savings Association, Prairie Village, Illinois ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2307 Filed 1–31–90; 8:45 am]

BILLING CODE 6720–01–M

Duval Federal Savings Association, Jacksonville, FL; 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 Duval Federal Savings Association, Jacksonville, Florida ("Association") on January 17, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–2308 Filed 1–31–90; 8:45 am]

BILLING CODE 6720–01–M

Empire of America FSB, Buffalo, NY; 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 Empire of America FSB, Buffalo, New

York ("Association") on January 24, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2309 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Financial Federal Savings and Loan Association, Fresno, CA; 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 Financial Federal Savings and Loan Association, Fresno, California ("Association") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2310 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of York, York, NE; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of York, York, Nebraska ("Association"), on January 17, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2311 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of York, York, NE; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of York, York, Nebraska ("Association"), on January 17, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2312 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Frontier Federal Savings Bank, Belleville, IL; 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 Frontier Federal Savings Bank, Belleville, Illinois ("Association"), on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2323 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Gem City Federal Savings and Loan Association, Quincy, IL; 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 Gem City Federal Savings and Loan Association, Quincy, Illinois ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2314 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Horizon Savings Bank, F.S.B., Wilmette, IL; 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 Horizon Savings Bank, F.S.B., Wilmette, Illinois ("Savings Bank"), on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2315 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Karnes County Federal Savings and Loan Association, Karnes City, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act 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 Karnes County Federal Savings and Loan Association, Karnes City, Texas ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2316 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Marshall Savings Association, F.A., Marshall, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act 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 Marshall Savings Association, F.A., Marshall, Texas ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2317 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Standard Federal Savings Association, Houston, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act 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 Standard Federal Savings Association, Houston, Texas ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2318 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

American Bank, a FSB, Sanford, ME; Appointment of Receiver

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 Receiver for American Bank, A FSB, Sanford, Maine ("Savings Bank") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2319 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Atlantic Financial Federal, Bala Cynwyd, PA; 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 Atlantic Financial Federal, Bala Cynwyd, Pennsylvania ("Association") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2320 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Certified Savings Association Georgetown, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (C) 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 Receiver for Certified Savings Association, Georgetown, Texas ("Association") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc 90-2321 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Colonial Savings, A Federal Association, Prairie Village, KS; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Colonial Savings, a Federal Association, Prairie Village, Kansas ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2322 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Duval Federal Savings and Loan Association, Jacksonville, FL; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Duval Federal Savings and Loan Association, Jacksonville, Florida ("Association"), docket #5731, on January 17, 1990.

Dated: January 17, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2323 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Financial Savings and Loan Association, Fresno, CA; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Financial Savings and Loan Association, Fresno, California ("Association") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2324 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Brookhaven, Brookhaven, MS; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Brookhaven, Brookhaven, Mississippi ("Association"), on January 17, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2325 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of York, York, NE; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust

Corporation as sole Receiver for First Federal Savings and Loan Association of York, York, Nebraska ("Association"), on January 17, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2326 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Frontier Bank, a Federal Savings Bank, Belleville, IL; 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 Frontier Bank, a Federal Savings Bank, Belleville, Illinois ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2327 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Gem City Savings and Loan Association, Quincy, IL; 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 Gem City Savings and Loan Association, Quincy, Illinois ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2328 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Horizon Federal Savings Bank; Wilmette, IL; 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 Horizon Federal Savings Bank, Wilmette, Illinois ("Savings Bank") on January 11, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc 90-2329 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Karnes County Savings and Loan Association, Karnes City, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Karnes County Savings and Loan Association, Karnes City, Texas ("Association") on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc 90-2330 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Marshall Federal Savings and Loan Association, Marshall, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) and (B) of the Home Owners' Loan Act 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 Marshall Federal Savings and Loan Association, Marshall, Texas ("Association"), on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2331 Filed 1-31-90; 8:45 am]

BILLLING CODE 6720-01

Standard Savings Association, Houston, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Standard Savings Association, Houston, Texas ("Association"), on January 18, 1990.

Dated: January 25, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2332 Filed 1-31-90; 8:45 am]

BILLLING CODE 6720-01-M

Office of Thrift Supervision

[No. AC-1]

Illini Federal Savings and Loan Association Fairview Heights, IL; Final Action; Approval of Conversion Application

Date: January 10, 1990.

Notice is hereby given that on January 10, 1990, the Director of the Office approved the application of Illini Federal Savings and Loan Association, Fairview Heights, Illinois ("Illini"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the acquisition of the conversion stock by First Financial Corporation, Stevens Point, Wisconsin, through the merger of Illini with and into First Financial Bank, F.S.B., Stevens Point, Wisconsin, a wholly-owned subsidiary of First Financial Corporation.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-2302 Filed 1-31-90; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 22
Thursday, February 1, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

Time and Date: 10:00 a.m., Thursday, February 13, 1990.

Place: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

Status: Closed.

Matters to be Considered: Enforcement matters.

Contact Person For More Information: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2457 Filed 1–31–90; 1:14 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, February 20, 1990.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Application for contract designation submitted by the New York Mercantile Exchange to trade Natural Gas futures.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2458 Filed 1–30–90; 1:14 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Time and Date: 10:00 a.m., Tuesday, February 27, 1990.

Place: 2033 K Street NW., Washington, DC, 5th Floor Hearing Room.

Status: Open.

Matters to be Considered:

Amendments concerning Trading Cards and Submission of Trade Records—final rules.

Service on Self-Regulatory Organization Governing Boards or Committees by Persons with Disciplinary Histories—final rules.

Contact Person for More Information: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2459 Filed 1–30–90; 1:14 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Time and Date: 10:30 a.m., Tuesday, February 27, 1990.

Place: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

Status: Closed.

Matters to be Considered: Rule enforcement review.

Contact Person For More Information: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2460 Filed 1–30–90; 1:14 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Time and Date: 11:00 a.m., Tuesday, February 27, 1990.

Place: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

Status: Closed.

Matters to be Considered: Enforcement matters.

Contact Person For More Information: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2461 Filed 1–30–90; 1:14 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Time and Date: 10:00 a.m., Thursday, March 1, 1990.

Place: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

Status: Open.

Matters to be Considered: Program Objectives, 3rd Quarter FY 1990.

Contact Person For More Information: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2462 Filed 1–30–90; 1:14 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Time and Date: 10:30 a.m., Thursday, March 1, 1990.

Place: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

Status: Closed.

Matters to be Considered: Enforcement objectives.

Contact Person For More Information: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90–2463 Filed 1–30–90; 1:14 pm]

BILLING CODE 6351–01–M

FEDERAL ELECTION COMMISSION

Date and Time: Tuesday, February 6, 1990 at 10:00 a.m.

Place: 999 E Street, NW., Washington, DC.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

Date and Time: Wednesday, February 7, 1990 at 3:00 p.m.

Place: 999 E Street, NW., Washington, DC.

Status: This meeting will be closed to the public.

Matter to be Discussed:

Discussion of the appointment of an Inspector General.

Date and Time: Thursday, February 8, 1990 at 10:00 a.m.

Place: 999 E Street, NW., Washington, DC. (Ninth Floor).

Status: This meeting will be open to the public.

Matters to be Considered:

Correction and Approval of Minutes.
Draft Advisory Opinion 1989–32—Lance H. Olson, Esquire, on behalf of Californians for Safe Streets.
Proposed Allocation Regulations.
Senior Executive Service—Mr. Kirke Harper, OPM's Director of Executive Personnel, will brief the Commission on the SES.
Administrative Matters.

Person To Contact For Information: Mr. Fred Eiland, Information Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90–2491 Filed 1–30–90; 3:11 pm]

BILLING CODE 6715–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), Notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 10:00 a.m. on Monday, February 5, 1990, to consider the following matters:

Summary Agenda

No Cases.

Discussion Agenda

A. *Memorandum and resolution re: Final rule entitled, "Qualification of, Ethical Standards of Conduct for, and Restrictions on the Use of Confidential Information by Independent Contractors," which establishes the minimum qualifications, ethical standards of conduct, and the restrictions on the use of confidential information relating to independent contractors who seek or contract to provide services to the Resolution Trust Corporation ("RTC") in connection with its management and resolution of failing and failed thrift institutions.*

B. *Memorandum and resolution re: Final rule governing "Employee Responsibilities and Conduct," which prescribe standards of ethical and other conduct for RTC employees.*

The meeting will be held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 898–3604.

Dated: January 29, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–2446 Filed 1–30–90; 1:12 pm]

BILLING CODE 6714–01–M

federal register

Thursday
February 1, 1990

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 81 and 82
FD&C Red No. 3; Final Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 81 and 82

[Docket Nos. 76C-0044 and 76N-0366]

RIN 0905-AB60

Termination of Provisional Listings of FD&C Red No. 3 for Use in Cosmetics and Externally Applied Drugs and of Lakes of FD&C Red No. 3 for All Uses

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the expiration of the provisional listing for FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and for all uses of the lakes of FD&C Red No. 3. FDA is not extending the provisional listing of these uses of FD&C Red No. 3 and its lakes because the agency has concluded, on the basis of animal experiments that were performed as a condition of these provisional listings, that the color additive and its lakes have not been shown to be safe. In particular, the color additive causes a carcinogenic response in rats. Therefore, FD&C Red No. 3 may not be added to cosmetics and externally applied drugs, and the lakes of FD&C Red No. 3 may not be added to food, drugs, or cosmetics. Published elsewhere in this issue of the **Federal Register** is a notice denying the color additive petition for the permanent listing of FD&C Red No. 3 for use in cosmetics and externally applied drugs.

EFFECTIVE DATE: January 29, 1990.

FOR FURTHER INFORMATION CONTACT: Catherine J. Bailey, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: FDA is announcing the termination of the provisional listing of FD&C Red No. 3 for use in cosmetics and externally applied drugs and of the provisional listing of the lakes of FD&C Red No. 3 for all uses. Published elsewhere in this issue of the **Federal Register** is a notice denying the color additive petition for the permanent listing of FD&C Red No. 3 for use in cosmetics and externally applied drugs (the denial notice).

I. Background and Procedural History

FD&C Red No. 3, a bluish red color of the xanthene class, is currently identified in Chemical Abstracts as the disodium salt of 3', 6'-dihydroxy-2', 4', 5', 7'-tetraiodospiro[isobenzofuran-1(3*H*), 9'-[9*H*]xanthen]-3-one, (CAS Reg. No. 16423-68-0). FDA and industry communications have established the common name "fluorescein" as a means of identifying derivatives of that chemical moiety. Therefore, FDA identifies this color additive as principally the disodium salt of 2', 4', 5', 7'-tetraiodofluorescein (CAS Reg. No. 16423-68-0) with smaller amounts of the disodium salts of 2', 4', 5'-triiodofluorescein (CAS Reg. No. 56254-06-9) and 2', 4', 7'-triiodofluorescein (CAS Reg. No. 83498-90-2). The designation "FD&C Red No. 3" is permitted only for those batches of the color additive that the agency has certified to be in compliance with § 74.303 (21 CFR 74.303). Uncertified material is commonly called erythrosine or other names, including Colour Index (C.I.) Acid Red 51; C.I. No. 45430; and C.I. Food Red 14.

The Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, 74 Stat. 404-407) (the amendments) of the Federal Food, Drug, and Cosmetic Act (the Act), 21 U.S.C. 321 *et seq.*, require premarket clearance of any color additive that is represented for use in or on food, drugs, cosmetics, certain medical devices, or the human body.

Under the amendments, a color additive may be approved only if data establish that it is safe under its intended conditions of use. Recognizing that many color additives, including lakes of color additives, were already in use at the time of the amendments, Congress provided, under section 203(b) of the transitional provisions of the amendments, for the provisional listing of these substances while they were being tested for safety. Because FD&C Red No. 3 and its lakes were in use at the time the amendments were enacted, they were provisionally listed for all food, drug, and cosmetic uses in the **Federal Register** of October 12, 1960 (25 FR 9759).

Thereafter, a color additive petition (CAP 8C0067) for the permanent listing of FD&C Red No. 3 for use in food, including dietary supplements, and ingested drugs was submitted by the Certified Color Industry Committee (now the Certified Color Manufacturers' Association (CCMA)). A notice of filing of the petition was published in the **Federal Register** of July 2, 1968 (33 FR 9627). In the **Federal Register** of May 8, 1969 (34 FR 7446), FD&C Red No. 3 was listed pursuant to 21 U.S.C. 376 for use in food and ingested drugs under §§ 8.242 and 8.4102 (21 CFR 8.242 and 8.4102). These regulations were subsequently recodified at 21 CFR 74.303 and 74.1303.

In 1973, the Toilet Goods Association, Inc., (now the Cosmetic, Toiletry, and Fragrance Association, Inc., (CTFA), 1110 Vermont Ave. NW., Washington, DC 20005) submitted a petition (CAP 9C0096) for the use of FD&C Red No. 3 for coloring externally applied drugs and cosmetics, including lipsticks. The filing of this petition was announced in the **Federal Register** of August 6, 1973 (38 FR 21199). Subsequently, in a letter dated May 14, 1974, CTFA requested that its petition be amended to include listing FD&C Red No. 3 in cosmetics for eye-area use. FDA published an amended filing notice for the petition in the **Federal Register** of March 5, 1976 (41 FR 9584), to include the listing of FD&C Red No. 3 for eye-area use and all types of cosmetics that are subject to ingestion. However, because the petitioner has not responded to FDA's request of May 14, 1976, for information related to eye-area use of the color additive, FDA considers the portion of the petition relating to listing of FD&C Red No. 3 for eye-area use to be withdrawn without prejudice in accordance with the provisions of 21 CFR 71.6(c).

Although it is not the petitioner for the permanent listing of the cosmetic and externally applied drug uses, CCMA has submitted much of the data concerning the safety of FD&C Red No. 3 because of the organization's overall interest in the status of the color additive. Thus, CCMA and CTFA will hereafter be referred to collectively as the proponents of FD&C Red No. 3.

Because there were questions concerning general regulations for lakes of color additives, the lakes of FD&C Red No. 3 were not permanently listed and, instead, have continued to be provisionally listed for use as a coloring agent in food, drugs, and cosmetics. Food uses of the lakes include nuts, chewing gum, baked goods, and soft candy. Ingested drug uses include tablet formulations and liquid preparations; cosmetic uses include creams and lotions; face and body powder; and dry, liquid, and cream rouges.

FD&C Red No. 3 lakes have two separate provisional listings. First, FD&C Red No. 3 lakes are provisionally listed for food, drug, and cosmetic use under § 81.1(a) (21 CFR 81.1(a)); the specifications for certification of these lakes of FD&C Red No. 3 are set out in § 82.51 (21 CFR 82.51). Under § 82.51, FD&C Red No. 3 lakes may be prepared using only FDA certified batches of the color additive, alumina, and the cations of aluminum and/or calcium. FD&C Red No. 3 lakes must then be batch certified by FDA.

Second, there are lakes of FD&C Red No. 3 that are limited to drug and cosmetic use; they are referred to as D&C Red No. 3 lakes. D&C Red No. 3 lakes are provisionally listed under § 81.1(b) (21 CFR 81.1(b)); the specifications for certification of these lakes are set out in § 82.1051 (21 CFR 82.1051). Under § 82.1051, D&C Red No. 3 lakes may be prepared using uncertified batches of the color additive, substrata, and cations as provided for under paragraph § 82.1051(a)(1). Section 82.1051(b) requires that the final material be batch certified by FDA as a D&C Red No. 3 lake.

The use of FD&C Red No. 3 in cosmetics and externally applied drugs, as well as all uses of the lakes of the color additive, have remained provisionally listed under § 81.1. FDA established a closing date of October 2, 1983, for the provisionally listed uses of FD&C Red No. 3 in the **Federal Register** of March 27, 1981 (46 FR 18954). At that time, the agency conditioned the extension of the provisional listing of the color additive upon the submission by October 2, 1982, of final reports of new chronic toxicity studies. The agency had required that new chronic toxicity studies be done because studies previously submitted were not adequate under then current standards to establish the safety of the color additive for ingested uses.

The October 2, 1983, closing date for the provisionally listed uses of FD&C Red No. 3 was further postponed by FDA in a series of final rules published in the **Federal Register**. A detailed description of the procedural history of the provisionally listed uses of FD&C Red No. 3 is set forth in the denial notice published elsewhere in this issue of the **Federal Register**. The current closing date of January 29, 1990, was established by FDA by final rule published in the **Federal Register** of October 30, 1989 (54 FR 43961).

Despite these numerous extensions of the closing date for the provisionally listed uses of FD&C Red No. 3, the proponents have not, as shown below and as discussed in detail in the denial notice, established that the color additive is safe, to a reasonable certainty, for the petitioned uses.

II. Toxicity Studies of FD&C Red No. 3

The continued provisional listing of FD&C Red No. 3 was conditioned upon, among other requirements, the submission to FDA by October 2, 1982, of final reports of chronic toxicity studies in rats and in mice (21 CFR 81.27(d)). In response to this requirement, the proponents of FD&C Red No. 3 sponsored two chronic feeding studies. In these studies, FD&C Red No. 3 was administered in the diet to Sprague-Dawley Charles River Albino CD rats and in the diet to Charles River CD–1 mice. The final reports of these chronic feeding studies were submitted to FDA in May and October 1982. In addition to the chronic feeding studies, the proponents of FD&C Red No. 3 have submitted other data and information concerning the toxicity of the color additive. All of the studies, data, and other information submitted by the proponents is described in detail in the denial notice published elsewhere in this issue of the **Federal Register**; that description is incorporated herein.

FDA has reviewed the final reports of the chronic feeding studies as well as all other available toxicological information on FD&C Red No. 3. Based upon the results of the chronic toxicity studies, FDA has concluded that FD&C Red No. 3 is an animal carcinogen. In particular, in the chronic feeding study in rats, exposure to the color additive was associated with an increased incidence of combined thyroid follicular cell adenomas and carcinomas in male rats fed at the highest level (4.0 percent). FDA's evaluation of the long-term feeding studies of FD&C Red No. 3 is discussed in detail in the denial notice published elsewhere in this issue of the **Federal Register**; that discussion is incorporated herein. Thus, FDA has determined that FD&C Red No. 3 is an animal carcinogen.

The proponents of FD&C Red No. 3 have hypothesized that the thyroid tumors in male rats in the chronic study were the result of a secondary mechanism of action and, thus, were not caused by FD&C Red No. 3. In particular, the proponents assert that the available evidence demonstrates that FD&C Red No. 3 itself, or iodine released by the color additive, causes a thyroid hormone imbalance; that imbalance then leads to an increased incidence of tumors.

In such circumstances, the proponents argue, there is a threshold level for the effects that lead to this hormonal imbalance, and that below this threshold, the ingestion of FD&C Red No. 3 will not affect thyroid hormone levels and tumors will not be induced. Accordingly, the proponents claim that the data demonstrating a threshold level of effects will permit FDA to establish safe conditions of use for FD&C Red No. 3.

In an effort to establish the secondary mechanism hypothesis as well as to establish a threshold for this effect, the proponents have sponsored two 60-day studies in rats; the results of these studies were submitted to the agency in January 1989 and August 1989. The proponents also submitted an absorption, distribution, and metabolism study of FD&C Red No. 3 in rats in February 1989. These studies, as well as other data and information submitted by the proponents to support their secondary mechanism hypothesis, are described in detail in the denial notice published elsewhere in this issue of the **Federal Register**; that description is incorporated herein.

The agency has reviewed the reports of all relevant studies as well as all other toxicological information that bears on the hypothesis of a secondary mechanism, and has concluded that the data do not establish that the carcinogenic effect of FD&C Red No. 3 is due to a secondary mechanism. The denial notice published elsewhere in this issue of the **Federal Register** discusses at length FDA's evaluation of and conclusions based upon the data submitted to support the proponents' hypothesis that FD&C Red No. 3 operates as a secondary oncogen; that discussion is incorporated herein.

The final toxicity study reports, the agency's evaluations of these studies, and all other information relied upon by the agency in reaching its decision are on file at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, under Docket No. 76C–0044, and may be reviewed between 9 a.m. and 4 p.m., Monday through Friday.

III. Termination of the Provisional Listings

Although section 203(a) of the transitional provisions of the amendments provides for the provisional listing of a color additive "pending the completion of the scientific investigations needed as a basis for making determinations as to listing of such additives," section 203(a)(2) authorizes the Secretary to terminate the postponement of the closing date "at any time if he finds * * * that by reason of a change in circumstances the basis for such postponement no longer exists * * *." In addition, section 203(d)(1)(E) provides "for the termination of a provisional listing * * * of a color additive or particular use thereof forthwith whenever in [the Secretary's] judgment such action is necessary to protect the public health."

In the case of the provisionally listed uses of FD&C Red No. 3, FDA finds that both a change in circumstances and protection of the public health require that the provisional listings for use of

FD&C Red No. 3 and for the lakes of FD&C Red No. 3 be terminated. As discussed above, the agency has completed its review of the data submitted in support of the petition for the permanent listing of FD&C Red No. 3 for use in cosmetics and in externally applied drugs and has concluded that the available evidence does not establish the safety of the color additive. Thus, the proponents of FD&C Red No. 3 have not sustained their burden under the act. Accordingly, the agency is denying the pending petition. Accordingly, pursuant to the transitional provisions of the amendments, there is no basis on which to continue the provisional listings for these uses.

In addition, as set forth above, the agency has determined, based upon tests that were appropriate for evaluating the safety of the uses of this color additive and its lakes, that FD&C Red No. 3 is an animal carcinogen. Although the proponents of FD&C Red No. 3 have hypothesized that the oncogenic effect of FD&C Red No. 3 is the result of a secondary mechanism, the data submitted by the proponents do not establish this hypothesis. Accordingly, FD&C Red No. 3 is deemed unsafe (21 U.S.C. 376(b)(1)(5)(B)). In such circumstances, FDA concludes that extension of the provisionally listed uses of the color additive in cosmetics and externally applied drugs in not consistent with the protection of the public health. The agency has likewise concluded that extension of the provisional listing for the lakes of FD&C Red No. 3 is not warranted because the toxicity data for the color additive must necessarily be imputed to lakes that use the color additive. In addition, there are no separate safety data that independently establish the safety of the lakes of FD&C Red No. 3. For these reasons, the agency has also concluded that extension of the provisional listing of the lakes of FD&C Red No. 3 is not appropriate.

Based upon the foregoing, FDA has decided not to issue a further extension of the provisional listings of this color additive for use in cosmetics and externally applied drugs and of the lakes of this color additive for use in food, drug, and cosmetics. As a result of the agency's decisions, all provisional listings of FD&C Red No. 3 terminate on January 29, 1990.

Accordingly, under the transitional provisions of the Color Additive Amendments of 1960, FDA announces that: (1) The provisional listings of FD&C Red No. 3 for use in cosmetics and externally applied drugs and of the lakes of FD&C Red No. 3 in food, drug, and cosmetic products have expired; (2) all certificates heretofore issued for batches of FD&C Red No. 3 and all mixtures containing this color additive for use in cosmetics and externally applied drugs and all certificates issued for batches of FD&C Red No. 3 lakes and D&C Red No. 3 lakes are cancelled as of January 29, 1990; and (3) after January 29, 1990, the addition of FD&C Red No. 3 to cosmetics and externally applied drugs or the addition of the lakes of FD&C Red No. 3 to food, drug, or cosmetic products will cause such products to be adulterated within the meaning of sections 402, 501, and 601 of the act (21 U.S.C. 342, 351, and 361) and to be subject to regulatory action.

FDA has considered whether any health concern regarding the use of this color additive or its lakes represents an acute, imminent hazard, and has concluded that it does not. Therefore, because the risks posed by FD&C Red No. 3 result from chronic, long-term exposure, the protection of the public health does not require the recall from the market or the destruction of any food, drug, or cosmetic preparations to which the provisionally listed color additive or its lakes has already been added.

Manufacturers of new drugs and new animal drugs that contain FD&C Red No. 3 or its lakes and that are subject to the prohibition set forth below may either discontinue use of the color additive or its lakes or substitute different color additives in accordance with the provisions of 21 CFR 314.70(b)(2)(i) and (d)(4) or 21 CFR 514.8(d)(3) and (e), as appropriate. If a substitute color additive is not used, the human drug manufacturer shall describe the change fully in the next annual report as required under 21 CFR 314.81(b)(2)(iv)(*b*). If a substitute color additive is used, the manufacture shall file with FDA a supplemental new drug application or a supplemental new animal drug application containing data describing the new composition and showing that the change in composition does not interfere with any assay or other control procedures used in manufacturing the drug, or that the essay and control procedures have been revised to make them adequate.

The applicant shall also submit data to establish the stability of the revised formulation. If the available data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, the applicant shall submit a commitment to test the stability of marketed batches at reasonable intervals, to submit to FDA those data as they become available, and to recall from the market any batch found to fall outside the approved specifications for the drug.

Each sponsor of a notice of claimed investigational exemption for a new drug (IND) or a notice of claimed investigational exemption for a new animal drug (INAD) containing FD&C Red No. 3 or a lake of FD&C Red No. 3 and that is subject to the prohibition set forth for the order below should promptly amend the IND and INAD to indicate that the color additive has been deleted or a different color additive has been substituted.

FDA is aware that supplies of alternative color additives and labeling may be difficult to obtain immediately. Consequently, food, drug, and cosmetic labeling that states that the product contains "artificial color" or that specifially identifies FD&C Red No. 3 or its lakes (including D&C Red. No. 3 lakes) may continue to be used with the uncolored product or with products containing alternative colors during the time necessary to obtain supplies of revised labeling or until January 29, 1991, whichever comes first.

By making appropriate revisions in 21 CFR parts 81 and 82, the order set forth below effectuates the announcement that FDA has terminated the provisional listings of FD&C Red. No. 3 for certain uses and its lakes for all uses.

The agency has analyzed the economic effects of this action and has determined that it does not meet the criteria for a major rule in Executive Order 12291. Further, although this action is exempt from the Regulatory Flexibility Act because it was not preceded by a proposed rule, FDA has considered the effect of this action on small entities, including small businesses, and has determined that no significant adverse effect will derive from this action. A copy of the agency's economic assessment is on file with the Dockets Management Branch (address above) under Docket No. 76C–0044.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, is on file with the Dockets Management Branch (address above) under Docket No. 76C–0044 and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Notice and public procedure are not necessary prerequisites to promulgating

these regulations because section 203(d)(2) of Pub. L. 86–618 so provides.

List of Subjects

21 CFR Part 81

Color additives, Color additives provisional list, Cosmetics, Drugs.

21 CFR Part 82

Color additives, Color additive lakes, Color additives provisional list, Cosmetics, Drugs.

Therefore, under section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376), and under the transitional provisions of the Color Additive Amendments of 1960 (74 Stat. 404–407 (21 U.S.C. 376, note)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), 21 CFR parts 81 and 82 are amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR part 81 continues to read as follows:

Authority: Secs. 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 376, 376 note).

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in the table of paragraph (a) by removing the entry for "FD&C Red No. 3".

3. Section 81.10 is amended by adding new paragraph (u) to read as follows:

§ 81.10 Termination of provisional listings of color additives.

* * * * *

(u) *FD&C Red No. 3.* Having concluded that FD&C Red No. 3 causes cancer in rats, the agency hereby terminates the provisional listing of FD&C Red No. 3 for use in cosmetics and externally applied drugs and the provisional listing of the lakes of FD&C Red No. 3 for use in food , drug, and cosmetic products, effective January 29, 1990.

§ 81.27 [Removed]

4. Section 81.27 *Conditions of provisional listing is removed.*

5. Section 81.30 is amended by adding new paragraph (u) to read as follows:

§ 81.30 Cancellation of certificates.

* * * * *

(u)(1) Certificates issued for FD&C Red No. 3 and all mixtures containing this color additive are cancelled and have no effect as pertains to their use in cosmetics and externally applied drugs after January 29, 1990. Certificates issued for FD&C Red No. 3 lakes and all mixtures containing these lakes are cancelled and have no effect as pertains to their use in food, drugs, and cosmetics after January 29, 1990. Certificates issued for D&C Red No. 3 lakes and all mixtures containing those lakes are cancelled and have no effect as pertains to their use in drugs and cosmetics after January 29, 1990. Use of this color additive in the manufacture of cosmetics and of externally applied drugs and any use of the lakes of FD&C Red No. 3 (including the lakes of D&C Red No. 3) after this date will result in adulteration.

(2) The agency finds, on the scientific evidence before it, that no action must be taken to remove from the market food, drugs, and cosmetics to which the provisionally listed color additive or its lakes were added on or before January 29, 1990.

PART 82—LISTING OF CERTIFIED PROVISIONALLY LISTED COLORS AND SPECIFICATIONS

6. The authority citation for 21 CFR part 82 continues to read as follows:

Authority: Secs. 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371, 376, 376 note).

§ 82.303 [Removed]

7. Section 82.303 *FD&C Red No. 3* is removed.

Dated: January 26, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–2265 Filed 1–29–90; 11:20 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 76C-0044 and 76N-0366]

RIN 0905-AB60

Color Additives; Denial of Petition for Listing of FD&C Red No. 3 for Use in Cosmetics and Externally Applied Drugs; Withdrawal of Petition for Use in Cosmetics Intended for Use in the Area of the Eye

AGENCY: Food and Drug Administration.

ACTION: Notice; order denying petition.

SUMMARY: The Food and Drug Administration (FDA) is denying the color additive petition (CAP 9C0096) that requests the "permanent" listing of FD&C Red No. 3 as a color additive for use in cosmetics, including lipsticks and other ingested cosmetics, and externally applied drugs. The agency is taking this action because it has concluded that the proponents of FD&C Red. No. 3, principally the Cosmetic, Toiletry and Fragrance Association, Inc., and the Certified Color Manufacturers' Association, have not established that the use of this color additive in cosmetics, including lipsticks and other ingested cosmetics, and externally applied drugs is safe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act. FD&C Red No. 3 causes a carcinogenic response in rats. Published elsewhere in this issue of the **Federal Register** is a document announcing the termination of the provisional listing of FD&C Red No. 3 for use in all cosmetics and externally applied drugs, and for all uses of lakes of FD&C Red No. 3 in food, drugs, and cosmetics.

DATES: Written objections and requests for a hearing by March 5, 1990.

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

FOR FURTHER INFORMATION CONTACT: Catherine J. Bailey, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

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I. Introduction

In 1960, the Federal Food, Drug, and Cosmetic Act (the act) was amended by the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, 74 Stat. 404-407) (the amendments). As amended, the act provides that a color additive is deemed unsafe for use in or on food, drugs, cosmetics, certain medical devices, or the human body unless FDA has issued a regulation permanently listing that color additive for its intended uses (section 706(a) (21 U.S.C. 376(a))). FDA will issue such a regulation only if the agency has been presented with data that establish with reasonable certainty that no harm will result from the use of the color additive. The burden of presenting such data is on the person seeking approval of the use of the additive (21 U.S.C. 376(b); 45 FR 6252 at 6254 and 6255 (January 25, 1980)). Thus, since 1960, the proponents of all color additives, including FD&C Red No. 3, have had the legal obligation to establish, with sound scientific data, the safety of those color additives. As shown below, consistent with the D.C. Circuit Court finding that the Delaney Clause established an "extraordinarily rigid" standard (*Public Citizen* v. *Young*, 831 F.2d 1108, 1122 (D.C. Cir. 1987), the proponents of FD&C Red No. 3 have not met their burden in that FD&C Red No. 3 has been found to cause a carcinogenic response in rats.

In *Certified Color Mfrs. Ass'n* v. *Mathews*, 543 F.2d 284 (D.C. Cir. 1976), the United States Court of Appeals for the District of Columbia Circuit explained the purpose of the amendments:

> The Color Additive Amendments of 1960 reflect a Congressional and administrative response to the need in contemporary society for a scientifically and administratively sound basis for determining the safety of artificial color additives, widely used for coloring food, drugs, and cosmetics. The Amendments reflect a general unwillingness to allow widespread use of such products in the absence of scientific information on the effect of these products on the human body. The previously used system had some glaring deficiencies, and the 1960 Amendments were designed to overcome them [footnotes omitted].* * *

543 F.2d at 286-87.

In section 203(b) of the transitional provisions of the amendments, Congress provided for the provisional listing of the color additives in use at the time of the amendments, pending completion of the scientific investigations necessary to determine the safety of these additives. In 1960, numerous color additives were "provisionally" listed. Over the years, those color additives were gradually

removed from the provisional list either by permanent listing or by removal from the market. At this time, the only straight color additive remaining on the provisional list is FD&C Red No. 3 for use in externally applied drugs and cosmetics.

II. Background and Regulatory History

The color additive FD&C Red No. 3 has been in use for many years. It was first listed for use in food as "erythrosin" on July 13, 1907 (Food Inspection Decision 76, U.S. Department of Agriculture) and listed for food, drug, and cosmetic use as "FD&C Red No. 3" on May 9, 1939 (4 FR 1922). Because FD&C Red No. 3 and its lakes were in use at the time of the 1960 amendments, both FD&C Red No. 3 and its lakes were provisionally listed for food, drug, and cosmetic use (25 FR 9759; October 12, 1960).

On March 27, 1968, the Certified Color Industry Committee (now the Certified Color Manufacturers' Association (CCMA)) submitted a petition (CAP 8C0067) to FDA requesting the permanent listing of FD&C Red No. 3 for use in food, dietary supplements, and ingested drugs. FDA announced the filing of CCMA's petition in the **Federal Register** of July 2, 1968 (33 FR 9627). Subsequently, FD&C Red No. 3 was permanently listed for use in food and in ingested drugs under 21 CFR 8.242 and 8.4102 (34 FR 7446; May 8, 1969). These regulations were later codified at 21 CFR 74.303 and 74.1303.

Thereafter, on September 5, 1969, the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA)), submitted a color additive petition (CAP 9C0096), requesting permanent listing of FD&C Red No. 3 for coloring cosmetics, including lipsticks, and externally applied drugs. FDA published a notice of filing of the petition in the **Federal Register** of August 6, 1973 (38 FR 21199).

Subsequently, in a letter dated May 14, 1974, CTFA requested that its petition be amended to include listing FD&C Red No. 3 in cosmetics for eye-area use. FDA published an amended filing notice for the petition in the **Federal Register** of March 5, 1976 (41 FR 9584), to include the listing of FD&C Red No. 3 for eye-area use and all types of cosmetics that are subject to ingestion. FDA notified the petitioner by letter dated May 14, 1976, of the need for data to support the use of FD&C Red No. 3 in cosmetics intended for use in the area of the eye. In a letter dated October 24, 1978, FDA advised the petitioner to consider withdrawing the portion of the petition that sought approval of the use of FD&C Red No. 3 in cosmetics intended for use in the area of the eye because it appeared that the required data from studies to support eye-area use of the color additive would not be readily available. Since that time, the petitioner has not submitted the required data on eye-area use. Therefore, FDA considers the portion of the petition relating to the listing of FD&C Red No. 3 for eye-area use to be withdrawn without prejudice in accordance with the provisions of 21 CFR 71.6(c).

FD&C Red No. 3 has remained provisionally listed for use in cosmetics and externally applied drugs under 21 CFR 81.1(a) since submission of CTFA's petition. The provisional listing of FD&C Red No. 3 currently has a closing date of January 29, 1990. Published elsewhere in this issue of the **Federal Register** is a document announcing the termination of this provisional listing. Specifications for certification of FD&C Red No. 3 for all uses are listed under 21 CFR 73.303.

Although it is not the petitioner for the permanent listing of the cosmetic and externally-applied drug uses, CCMA has submitted to the agency much of the data relevant to the safety of FD&C Red No. 3 because of the organization's overall interest in the status of the color additive. Thus, CCMA and CTFA will hereafter be referred to collectively as the proponents of FD&C Red No. 3. In determining whether to grant or deny this petition, FDA has considered all of the data submitted to the agency that is relevant to the safety of the color additive, regardless of who submitted it.

In the **Federal Register** of February 4, 1977 (42 FR 6992), FDA published revised provisional listing regulations which required new chronic toxicity studies on 31 color additives, including FD&C Red No. 3, as a condition of their continued provisional listing. FDA required the new chronic toxicity studies because previously submitted studies were deficient in several respects. FDA described these deficiencies in the **Federal Register** of September 23, 1976 (41 FR 41860 at 41863):

1. Many of the studies were conducted using groups of animals, i.e., control and those fed the color additive, that are too small to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color. The small number of animals used does not, in and of itself, cause this result, but when considered together with the other deficiencies in this listing, does do so. By and large, the studies used 25 animals in each group; today FDA recommends using at least 50 animals per group.

2. In a number of the studies, the number of animals surviving to a meaningful age was inadequate to permit conclusions to be drawn today on the chronic toxicity or carcinogenic potential of the color additives tested.

3. In a number of the studies, an insufficient number of animals was reviewed histologically.

4. In a number of the studies, an insufficient number of tissues was examined in those animals selected for pathology.

5. In a number of the studies, lesions or tumors detected under gross examination were not examined microscopically.

In the February 4, 1977, final rule, FDA postponed the closing date for the provisional listing of FD&C Red No. 3 until January 31, 1981, to allow for completion of the new chronic toxicity studies. The authority of the Commissioner of Food and Drugs to grant this extension of the FD&C Red No. 3 closing date was judicially sustained. *Health Research Group* v. *Califano*, No. 77–293 (D.D.C. September 23, 1977).

Due to unforeseen difficulties in completing the new chronic toxicity studies, FDA postponed the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes to October 2, 1983, by final rule published in the **Federal Register** of March 27, 1981 (46 FR 18954). Once again, the Commissioner's authority to postpone the closing date for the provisionally listed uses of FD&C Red No. 3 was challenged and sustained. *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982). The October 2, 1983, closing date was subsequently postponed to December 2, 1983, in the **Federal Register** of October 4, 1983 (48 FR 45237). Thereafter, FDA postponed the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes for brief periods to provide the agency additional time to complete its review and consider the scientific and legal aspects of the petitioned uses of the color additive. Each of these extensions was annnounced in the **Federal Register** (48 FR 53694, November 29, 1983; 49 FR 4202, February 3, 1984; 49 FR 13344, April 4, 1984; 49 FR 23039, June 4, 1984; 49 FR 30926, August 2, 1984; 49 FR 38935, October 2, 1984; 49 FR 47228, December 3, 1984; 50 FR 4642, February 1, 1985; 50 FR 13018, April 2, 1985).

As part of the agency's review of the FD&C Red No. 3 toxicity data, and at FDA's request, the National Toxicology Program Board of Scientific Counselors, Technical Reports Review Subcommittee (NTP Subcommittee) convened a public meeting for the purpose of providing peer review of the data from the chronic bioassay of FD&C Red No. 3 in Charles River CD–1 rats conducted by the International Research and Development Corporation (IRDC)

for CCMA. (This study and FDA's evaluation of it are discussed in detail below.) Notice of this meeting was published in the **Federal Register** of October 11, 1983 (48 FR 46104). At the meeting, the NTP Subcommittee heard presentations by FDA pathologists and toxicologists and by scientists and consultants representing CCMA. CCMA also asked the NTP Subcommittee to consider new data at the meeting. The new data included a study designed to determine if the effects observed were due to an iodine excess from the sodium iodide constituent of FD&C Red No. 3. After discussion and deliberation, the NTP Subcommittee issued its report on December 27, 1983. As discussed in detail below in section IV, the NTP Subcommittee concluded that chronic bioassay of FD&C Red No. 3 in Charles River CD–1 rats provided convincing evidence that FD&C Red No. 3 is an animal carcinogen.

On June 3, 1985, FDA announced that, as a result of the agency's review and consideration of all of the data and other information available on FD&C Red No. 3, it had become clear that the use of FD&C Red No. 3 raised significant policy and scientific questions that could not be immediately resolved. Consequently, the agency postponed the closing date for FD&C Red No. 3 and its lakes to September 3, 1985 (50 FR 23294; June 3, 1985). In a proposed rule published in the **Federal Register** of June 26, 1985 (50 FR 26377), FDA explained the significant scientific and policy questions presented by the data from the chronic feeding studies of FD&C Red No. 3. In particular, the agency discussed the proponents' secondary mechanism hypothesis (discussed below in section IV) as it relates to the increased incidence of thyroid follicular cell carcinomas, adenomas, and hyperplasia in male rats that were fed the color additive at the 4.0-percent level. The agency also discussed the possibility that a chronic study might be useful in resolving questions related to the secondary mechanism and the agency's willingness at that time to extend the provisional listings for FD&C Red No. 3 to permit such a study.

Finally, in the June 26, 1985, proposed rule, FDA proposed to extend the closing date for FD&C Red No. 3 and its lakes to September 3, 1986, to allow the agency to receive and evaluate the report of a review panel composed of scientific experts from the U.S. Public Health Service (the 1986 Panel) that had been convened to review two issues concerning the risk assessments for five provisionally listed color additives, including FD&C Red No. 3. The issues were: (1) Whether valid quantitative risk assessments could be performed for those color additives and (2) whether the available information supported the data analyses and the risk assessments that were performed and were before the agency. (The availability of the report of the 1986 Panel was subsequently announced in the **Federal Register** of March 6, 1986 (51 FR 7856).) In a final rule published in the **Federal Register** of September 4, 1985 (50 FR 35783), the agency responded to public comments on the June 26, 1985, proposal and postponed the closing date for FD&C Red No. 3 and its lakes to September 3, 1986.

Due to the complexity presented by the FD&C Red No. 3 data, the Commissioner of Food and Drugs, on June 16, 1986, convened a new Color Additives Review Panel (the 1987 Panel) to consider the data that appeared to suggest that FD&C Red No. 3 acts as a secondary carcinogen. The Commissioner requested that the 1987 Panel consider whether the data demonstrated that a secondary mechanism of action exists for FD&C Red No. 3; if not, what further studies would resolve the issue; and what human health concerns would be posed by continued use of the color additive until these questions were resolved. The closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes was again extended to November 3, 1986, to allow the 1987 Panel to complete its work and make its report to the Commissioner, and for the agency to evaluate the 1987 Panel's report and to develop appropriate **Federal Register** documents (51 FR 31323; September 3, 1986). This November 3, 1986, closing date was further extended to November 3, 1987, to allow the 1987 Panel additional time to complete its report and for FDA to review the report and publish its proposed action based upon the 1987 Panel's recommendations (51 FR 39856; November 3, 1986). (The 1987 Panel submitted its report to FDA in July 1987; the availability of the 1987 Panel's report was announced in the **Federal Register** of August 11, 1987 (52 FR 29728; [Docket No. 87N–0254]). The Commissioner's authority to extend the provisional listings for FD&C Red No. 3 was thereafter challenged and sustained for a third time in *Public Citizen* v. *Young*, 831 F.2d 1108 (D.C. Cir. 1987).

The 1987 Panel was unable to come to any conclusion concerning the exact mechanism by which FD&C Red No. 3 induced thyroid tumors in rats. It did state, however, that the color additive's tumorigenic effect is more likely to be the result of an indirect (secondary) mechanism. The 1987 Panel stated further that if it is assumed that the color additive poses a tumorigenic risk to humans, "the risk from ingesting [FD&C Red No. 3] containing food and drugs is small, that is, the number of people with [FD&C Red No. 3] induced tumors would be too small to be observed by epidemiologic or other human studies." The 1987 Panel suggested some studies that could be conducted to investigate further the mechanisms of action of FD&C Red No. 3.

In the **Federal Register** of November 3, 1987 (52 FR 42096), FDA announced that the agency was further extending the closing date for FD&C Red No. 3 and its lakes to May 2, 1988, to provide the agency with additional time to complete its review of the FD&C Red No. 3 toxicological data, as well as to consider the effect, if any, of the judicial decision in *Public Citizen* v. *Young, supra*, 831 F.2d 1108. (As discussed in section VI, in addition to ruling on the extension of the provisional listing, the court in *Public Citizen* v. *Young* addressed the applicability of the *de minimis* principle to color additives that are determined to be animal carcinogens.)

In a notice in the **Federal Register** of November 19, 1987 (52 FR 44485), FDA requested that all persons interested in the continued marketing of FD&C Red No. 3 and its lakes submit data concerning sale and use of the color additives in foods, drugs, and cosmetics. The agency stated that the requested data would be used to assess potential exposure to the color additive and to allocate the allowable safe uses of FD&C Red No. 3 among the current prevailing uses, if such allocation was determined to be necesary and appropriate based upon the agency's evaluation of available toxicological data. In a subsequent notice, FDA requested similar data concerning the use of FD&C Red No. 3 and its lakes in pet and animal food (52 FR 48326; December 21, 1987).

The closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes was extended to July 2, 1988, by a final rule published in the **Federal Register** of May 2, 1988 (53 FR 15551) and to August 30, 1988, in a final rule published in the **Federal Register** of July 1, 1988 (53 FR 25127). The purpose of each of these extensions was to provide FDA with additional time to complete its evaluation of the data and to prepare the apropriate **Federal Register** documents.

In the **Federal Register** of August 30, 1988 (53 FR 33147), FDA proposed to extend the closing date for the

provisional listing of FD&C Red No. 3 and its lakes to June 30, 1989. In that proposal, the agency stated that the additional extension was needed to receive and review data from an on-going study of the hormonal effects of FD&C Red No. 3 in rats being conducted for CCMA. CCMA asserted that the results of this on-going study, when combined with other available data, would establish that FD&C Red No. 3 operates through a secondary mechanism. (These study results are discussed in section IV). In the **Federal Register** of October 28, 1988 (53 FR 43685), FDA responded to public comments on the August 30, 1988, proposal and published a final rule that postponed the closing date for FD&C Red No. 3 and its lakes to June 30, 1989. In a final rule published in the **Federal Register** of June 30, 1989 (54 FR 27640), the agency extended the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes to August 29, 1989. In a final rule published in the **Federal Register** of August 29, 1989 (54 FR 35860), the agency extended the closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes to October 30, 1989. The current closing date for the provisionally listed uses of FD&C Red No. 3 and its lakes is January 29, 1990, as established by the final rule of October 30, 1989 (54 FR 43961).

As the foregoing recitation of the regulatory history shows, the proponents of FD&C Red No. 3 have had the obligation since 1960 to establish the safety of the use of this color additive. Moreover, as shown above, these proponents have been aware, at least since 1983, of the evidence that FD&C Red No. 3 is an animal carcinogen and, by virtue of the numerous extensions of the provisional listings for FD&C Red No. 3, have had a lengthy period of time in which to amass the scientific data to establish the safety of the color additive, including its mechanism of carcinogenic action. The proponents have not provided such data.

III. Chemistry

FD&C Red No. 3, a bluish red color of the xanthene class, is currently identified in Chemical Abstracts as the disodium salt of 3',6'-dihydroxy-2',4',5',7'-tetraiodospiro[isobenzofuran-1(3*H*), 9'-[9*H*]xanthen]-3-one (CAS Reg. No. 16423-68-0). FDA and industry communications have established the common name "fluorescein" as a means of identifying derivatives of that chemical moiety. Therefore, FDA now identifies this color additive as principally the disodium salt of 2',4',5',7'-tetraiodofluorescein (CAS Reg. No. 16423-68-0) with smaller amounts of the disodium salt of 2',4',5'-triiodofluorescein (CAS Reg. No. 56254-06-9) and 2',4',7'-triiodofluorescein (CAS Reg. No. 83498-90-2). The designation "FD&C Red No. 3" is permitted only for those batches of the color additive that the agency has certified to be in compliance with § 74.303. Section 74.303 provides specifications for the agency's batch certification of FD&C Red No. 3. These specifications include limitations for sodium iodide, starting material-related impurities derived from resorcinol and phthalic anhydride, and lower-iodinated impurities. The specifications require that the color additive contain at least 87 percent total color, which is principally comprised of the disodium salt of 2',4',5',7'-tetraiodofluorescein. Uncertified material is commonly called erythrosine or other names, including Colour Index (C.I.) Acid Red 51, C.I. No. 45430, or C.I. Food Red 14.45430, or C.I. Food Red 14.

IV. Toxicology

Although CTFA is the petitioner of record in this proceeding, other interested parties have submitted the results of studies and other information regarding the safety of FD&C Red No. 3. The pivotal study for this color additive is the chronic feeding study conducted in Charles River CD-1 rats, which, as discussed in detail below, establishes that FD&C Red No. 3 is an animal carcinogen. Most of the recently submitted studies, which have been submitted primarily by CCMA, address whether the color additive induces changes in thyroid/pituitary hormone levels that lead to formation of thyroid tumors in rats through a secondary mechanism. These studies were of short duration, with no exposure to FD&C Red No. 3 greater than 7 months, and none of them involved in utero exposure. Other studies, also submitted by CCMA, concern the effect of FD&C Red No. 3 on human thyroid physiology and how it is metabolized in man.

A. Summary of Toxicology Testing of FD&C Red No. 3

To establish that FD&C Red No. 3 is safe for use in cosmetics and externally applied drugs, CTFA, the petitioner, submitted reports of a number of animal toxicity studies conducted on the color additive prior to 1976. The external drug and cosmetic uses were not permanently listed on the basis of those submitted studies because studies specific to external application had not been completed.

As discussed above, on February 4, 1977 (42 FR 6992), FDA required the petitioners to perform additional long-term feeding studies in rats and mice as one of the conditions for the continued provisional listing of several color additives, including FD&C Red No. 3. The results of the new chronic study in rats showed an increased incidence of combined adenomas and carcinomas of the thyroid. Based upon these results, FDA concluded that FD&C Red No. 3 acted through a carcinogenic process to produce that response. That is, FDA concluded that FD&C Red No. 3 is an animal carcinogen. As noted above, FDA requested that the NTP Subcommittee review the data to determine whether it agreed with the agency's findings and to consider whether the response was mediated through a secondary mechanism of carcinogenesis. As discussed in more detail below, the NTP Subcommittee concluded that results of the chronic study were convincing evidence of carcinogenicity for FD&C Red No. 3 in male rats.

All of the data submitted subsequent to the chronic rat feeding study have been designed to elucidate the mechanism of action of FD&C Red No. 3's carcinogenic process and have not been designed or submitted to dispute the carcinogenic response observed in the chronic rat study. Thus, as detailed below, FDA's conclusion that FD&C Red No. 3 causes cancer in animals is unrefuted. The proponents of the color additive subsequently provided additional data from a short-term study, the Primate Research Institute (PRI) study, to support their initial contention that the thyroid tumors observed in the test animals were a response mediated by exposure to excess iodide supplied by FD&C Red No. 3. When the PRI results did not support the "iodide-mediated" hypothesis, the proponents then hypothesized that the thyroid tumors resulted from the operation of a secondary (or indirect) mechanism.

In particular, the proponents hypothesized that hormonal imbalances that resulted from the ingestion of high levels of FD&C Red No. 3 hyperstimulated the thyroid. The proponents further contended that, if a secondary mechanism exists, a threshold or "no effect" level for the hormonal effects could be established that would permit the determination of a safe dose of the color additive.

In support of this secondary mechanism hypothesis, the proponents submitted data from a 7-month exposure study in rats (the Hazleton study) and a 3-week study in rats to measure pituitary/thyroid effects (the Witorsch study). The proponents also submitted literature references pertinent to the

secondary mechanism hypothesis for FD&C Red No. 3.

Subsequently, in January 1989, the proponents submitted the results of a 60-day study (the Bio/dynamics I study) designed to provide evidence of the hormonal effects of FD&C Red No. 3 and to determine the threshold for these effects. In February 1989, the proponents submitted to FDA a final report on the absorption, distribution, and metabolism in rats of FD&C Red No. 3 (the ADME study). In April 1989, the proponents submitted additional information relating to the genotoxicity of FD&C Red. No. 3 and the secondary mechanism of carcinogenesis. In May and June of 1989, the proponents submitted protocols and preliminary results for a 60-day rat study and protocols for a 1-year study in rats (Bio/dynamics II study). In August 1989, the proponents submitted the final report for this most recent 60-day study. These studies were designed to provide additional support for the secondary mechanism hypothesis.

As discussed below, the agency has evaluated the earlier work and the proponents' more recent submissions.

B. Long-Term Rodent Studies

1. Experimental Design of the Long-Term Feeding Studies

Although the chronic feeding studies conducted prior to 1976 revealed no evidence of compound-related neoplastic responses, FDA concluded in 1976 that these earlier studies of FD&C Red. No. 3 were not adequate under current toxicologic testing standards to establish the safety of the color additive for the uses then provisionally listed. Thus, FDA's February 4, 1977, final rule required the petitioners to conduct additional chronic feeding studies on FD&C Red. No. 3. The studies were sponsored by CCMA and were conducted at the International Research and Development Corp. (IRDC), Mattawan, MI 49071. These studies included a long-term feeding study in mice and long-term feeding studies in rats with in utero exposure. (In utero exposure requires exposure of parent animals to the test substance prior to and during mating and exposure of their offspring during intrauterine development, lactation, and throughout their lifetime).

The experimental design for the IRDC studies of FD&C Red. No. 3 benefited from knowledge of the protocol deficiencies in previously conducted carcinogenesis bioassays and other chronic toxicity testing. Improvements in study design included: (1) The use of large numbers of animals of both sexes; (2) pilot studies to determine maximum tolerated dosages; (3) two control groups (thereby effectively doubling the number of controls); and (4) in utero exposure in one of two species tested. All of these protocol changes significantly increased the power of these tests to detect dose-related effects. For this reason, FDA believes that the results of the IRDC chronic feeding studies constitute a reliable basis for assessing the safety of FD&C Red. No. 3.

2. Long-Term Feeding Study in Mice

In the chronic feeding study conducted by the IRDC, Charles River CD(R)–1 mice of both sexes were randomly assigned to one of five treatment groups (120 animals per group with 60 animals per sex) that received FD&C Red No. 3 in dietary concentrations of 0, 0, 0.3, 1.0, and 3.0 percent for 24 months. (That is, there were two separate control groups of animals that did not receive FD&C Red No. 3 in their diet.) The final report for this study was submitted to the agency on May 11, 1982.

There were no adverse findings in this study that could be atttributed to the administration of the test compound. Thus, FDA concludes that the long-term exposure of Charles River CD(R)–1 mice to FD&C Red No. 3 did not produce a carcinogenic or other deleterious effect.

3. Long-Term Feeding Study in Rats

a. *The IRDC studies.* CCMA sponsored two long-term feeding studies in which FD&C Red No. 3 was administered in the diet of Sprague-Dawley Charles River Albino CD(R) rats in utero and for their lifetime (up to 28 months); these rat studies were also conducted by the IRDC.

In the first chronic feeding study, IRDC Study No. 410–002, the dosage levels of FD&C Red No. 3 were 0, 0, 0.1, 0.5, and 1.0 percent of the diet. (Again, two control groups received the diet without the test compound.) After this first study had begun, FDA concluded that the results of the pre-1976 studies on FD&C Red No. 3 and the multigeneration reproduction study then underway showed that the animals could tolerate a higher dose level. The agency, therefore, requested an additional chronic feeding study in rats using the 4-percent dose level. This second rat study, IRDC Study No. 410–011, included two groups of rats: a control group given a standard diet without the test compound and a treated group that received 4-percent FD&C Red No. 3 in the diet. The data from IRDC Study No. 410–002 were submitted to the agency on May 11, 1982; the data from IRDC Study No. 410–011 were submitted on October 1, 1982.

In the first study (IRDC Study No. 410–002), the incidences of palpable masses were similar for both treated and control rats. Food consumption was only slightly higher in treated animals than in controls. Body weights were similar for control and treated animals from week 26 to the end of the study. Mean thyroid weight was higher in females in the 0.5-percent and 1-percent dose levels compared with controls.

Both FDA and CCMA performed microscopic examination of the animals on test for neoplastic lesions. Based upon that examination, CCMA contended that there were no significant results. FDA is not in agreement with this conclusion. The agency's microscopic examination revealed statistically significant, higher incidences of male rats with combined thyroid follicular cell adenomas and carcinomas in 0.1-percent, 0.5-percent, and 1-percent dose groups, compared with the combined control animals ($p=0.016$, 0.0007, 0.029, respectively). The interpretation of this finding is discussed below.

In the second study (IRDC Study No. 410–011), thyroid gland enlargement (as determined by increased weight) occurred in the male rats in the 4-percent treated group. CCMA also reported a considerable increase in the incidence of male rats with thyroid follicular cell adenoma in the 4-percent group (15/69 or 21.7 percent) compared to its concurrent control group (1/69 or 1.4 percent); this increase was statistically significant. The incidence of thyroid follicular cell hyperplasia in the treated animals was also higher than that in rats in the concurrent control group. CCMA also reported that the incidence of carcinomas was 2/69 (2.9 percent) in the male rat control group compared with 3/69 (4.3 percent) in the male rats dosed with 4-percent FD&C Red No. 3. CCMA concluded that there is no statistical difference ($p<0.05$) between the incidences of carcinoma in these groups.

Based upon its own histopathology review of the second IRDC study, the agency disagrees with CCMA. FDA's review found 14/68 or 20.6 percent follicular cell adenomas in the 4-percent group compared with 1/68 or 1.5 percent in the controls. In addition, the agency's review found carcinomas in 5/68 or 7.4 percent of the 4-percent group compared with 1/68 or 1.5 percent in the controls. The agency's analysis of the incidence of combined adenomas and carcinomas demonstrated a statistically significant increase ($p<0.0007$) in such tumors: 18/

68 (26.5 percent) in the 4-percent group compared with 2/68 (2.9 percent) in controls. The agency disagrees with CCMA's interpretation of these results, as discussed in detail below.

The agency also confirmed that there were a few more rats with parafollicular cell (C-cell) tumors in the 4-percent treated group compared with the control group. Given the variability in the spontaneous occurrence of C-cell lesions in the rat, however, FDA declined to attribute the C-cell lesions in the rat study to the administration of FD&C Red No. 3.

Based on its evaluation of the data from the IRDC studies, the agency concludes that FD&C Red No. 3 caused cancer in male rats. Specifically, based upon its evaluation, the agency concludes that FD&C Red No. 3 caused an increased incidence of thyroid follicular cell hyperplasia and adenomas in males in the 4-percent dose group. In addition, the agency concludes that, in this same group of male rats, FD&C Red No. 3 caused an increased incidence of combined adenomas and carcinomas. For females, an increased incidence of adenomas was found in the 1-percent dose group but not in the 4-percent dose group, and thus, was not considered a dose-dependent effect in this dosage range. Notwithstanding this latter result in female rats, the results from the IRDC studies provide sufficient evidence to establish that FD&C Red No. 3 caused a carcinogenic effect in male rats.

b. *The NTP Subcommittee review.* At FDA's request, an NTP Subcommittee conducted a peer review of the IRDC Study Nos. 410–002 and 410–011 data. Based upon its review, the Subcommittee concluded, among other things, that there is convincing evidence from these chronic bioassays of the carcinogenicity of FD&C Red No. 3 in male rats. In particular, the NTP Subcommittee stated:

> Long-term administration of FD&C Red No. 3 at a level of 4% in the diet in male Charles River CD rats resulted in significantly higher incidences of thyroid follicular cell adenomas, and combined follicular cell adenomas and carcinomas when compared to concurrent control rats. These findings were considered to be convincing evidence of carcinogenicity for FD&C Red No. 3 in male rats.
>
> Additionally, there were significantly higher incidences of thyroid follicular cell adenomas, thyroid polymorphofollicular adenomas, and combined adenomas in female CD rats at a dietary level of 1%, and of thyroid C-cell adenomas in male rats at the 4% dose. Due to large variability in spontaneous occurrence of C-cell tumors in rats, the increase in incidence of C-cell adenomas was not judged to be biologically important. Exposed rats of both sexes had a higher incidence than controls of thyroid follicular hyperplasias. There was no evidence for a neoplastic effect of FD&C Red No. 3 in male or female Charles River CD-1 mice.
>
> On the basis of the existing evidence, the Subcommittee concluded that no determination could be made as to the mechanism (primary or secondary) of carcinogenic effects for FD&C Red No. 3 in the thyroid of male rats. The Subcommittee recommended that additional studies be designed to elucidate the carcinogenic mechanisms including: (1) More definitive studies on the genotoxic potential of the color, not only in microbial systems but also in mammalian cells; (2) further clarification of apparent metabolic effects of the color as evidenced so far in [these studies] by increased food consumption, decreased body weight and alterations in levels of T_3 and T_4 and TSH, as well as determination of a no effect level for inhibition of T_4 conversion to T_3; and (3) studies on the pharmacokinetics of the color in male rats encompassing gastrointestinal absorption, biotransformation, tissue binding and storage, and excretion.
>
> Finally, the Subcommittee agreed that new data presented at the meeting by consultants for the sponsor, the Certified Color Manufacturers Association, did not change its conclusions.

Thus, both the NTP Subcommittee and FDA have concluded that FD&C Red No. 3 is an animal carcinogen.

c. *The proponents' arguments.* In a submission dated November 23, 1983, CCMA argued that the IRDC data did not provide evidence of carcinogenicity of FD&C Red No. 3. Specifically, CCMA contended that: (1) There were no significant pathological changes of the thyroid in mice or rats fed FD&C Red No. 3 at 0.1-, 0.5-, or 1-percent levels; (2) there was no dose-response relationship in the incidences of thyroid follicular cell hyperplasia or adenomas in male rats, and thyroid carcinomas were not compound-related; (3) male rats fed the color additive at the 4-percent level did not demonstrate decreased survival time; and (4) FD&C Red No. 3 did not possess the characteristics common to confirmed thyroid carcinogens. CCMA conceded, however, that the increased incidence of thyroid follicular cell adenomas and hyperplasia in male rats at the 4-percent feeding level as compared with controls "suggest that the compound may be oncogenic for the thyroid of Sprague-Dawley rats."

d. *FDA's response to the proponents' arguments.* FDA has considered CCMA's arguments and concludes that they do not alter the agency's conclusion, clearly supported by the NTP Subcommittee, that FD&C Red No. 3 at the 4-percent dose level caused a carcinogenic effect in male rats.

First, the agency agrees that there were no significant pathological changes to the thyroids of mice in the chronic mouse study. However, the agency disagrees with CCMA's general contention that there were no pathological changes in the rats in Study No. 410–002. This disagreement is based on the agency's findings of: (1) An increased incidence of female rats with adenomas at the 1-percent dose; and (2) an increased incidence of combined adenomas and carcinomas in all male rat groups as compared with controls.

CCMA's failure to find a significant tumorigenic effect was apparently because its statistical analysis treated adenomas and carcinomas as separate tumor classes. In other words, CCMA apparently distinguished between oncogenicity and carcinogenicity and between the ability of FD&C Red No. 3 to induce benign tumors (adenomas) and malignant tumors (carcinomas). CCMA also used this separation of tumors into adenomas and carcinomas as the basis for later testing for statistically significant differences of tumor incidence between treated and control groups. Although FDA also separately analyzes the incidences of adenomas and carcinomas, FDA extends it analysis further: the agency combines the incidences of adenomas and carcinomas and then statistically compares the combined incidence of tumors in treated animals with the control groups.

FDA believes that the agency's approach to tumor analysis is appropriate because it is entirely sound to interpret thyroid follicular cell adenomas as an earlier stage in a series of progressive proliferative changes leading to the expression of follicular cell carcinomas (Ref. 1). In conducting its review, the NTP Subcommittee also considered the combining of carcinomas and adenomas to be an appropriate procedure. In IRDC Study No. 410–002, when the incidences of adenomas and carcinomas are combined, there is a statistically significant increase in the incidence of thyroid neoplasms in male rats at the 0.1-, 0.5-—, and 1-percent dose levels.

Second, the agency concedes that while there is a positive carcinogenic response in each of these dose groups, there is not strong evidence for a dose-related carcinogenic response in this study. However, even if the findings in IRDC Study No. 410–002 are deemed inconclusive, the carcinogenic response in IRDC Study No. 410–011 was definitive. Thus, the lack of a dose-response effect in IRDC Study No. 410–002 would not alter the agency's conclusion that FD&C Red No. 3 was

demonstrated to be an animal carcinogen in IRDC Study No. 410–011.

Third, thyroid neoplasms are rarely fatal to the tumor-bearing animal (Ref. 2). Thus, the fact that male rats fed the color additive at the 4-percent level did not demonstrate decreased survival time is not inconsistent with FDA's conclusion that FD&C Red No. 3 caused a carcinogenic response in male rats in the 4-percent dose group. In fact, the finding that survival time was not decreased may indicate that the maximum tolerated dose (MTD) was not attained. (The MTD is the highest dose that can be tested without compromising the results of a carcinogenicity study. Use of the MTD assures the greatest sensitivity to detect a carcinogenic effect.)

Fourth, CCMA claims that FD&C Red No. 3 did not possess the characteristics common to confirmed thyroid carcinogens because thyroid carcinogens induce both malignant and benign tumors of the thyroid and tumors at other histologic sites. As discussed above, the agency concludes that in male rats fed 4-percent FD&C Red No. 3, the color additive did increase the incidence of follicular cell adenomas, as well as increase the combined incidence of follicular cell adenomas and follicular cell carcinomas. Thus, the data clearly demonstrate FD&C Red No. 3 is a thyroid carcinogen in animals. Furthermore, simply because some thyroid carcinogens do cause tumors at other histologic sites does not mean that all thyroid carcinogens must display this characteristic (Ref. 3).

In sum, FDA has reviewed the results of the two chronic feeding studies of FD&C Red No. 3 and has considered all of the arguments proffered by the proponents of the color additive. Based upon this review and consideration, FDA has concluded that the results of IRDC Study No. 410–011 firmly establish that FD&C Red No. 3 caused thyroid cancer in male rats when fed at the 4-percent dose level. The results of the second IRDC Study, No. 410–002, provide additional evidence to support the agency's conclusion that in a well-conducted scientific study (IRDC Study No. 410–011), FD&C Red No. 3 was shown to be an animal carcinogen.

C. Genotoxicity

The proponents of FD&C Red No. 3 contend that the color additive is not genotoxic and thus argue that a primary mechanism is not operating to induce rat thyroid follicular cell tumors. They have submitted published literature and reports to support their contention. The resolution of the potential genotoxicity of FD&C Red No. 3 is significant to the proponents' secondary mechanism hypothesis. If FD&C Red No. 3 is genotoxic, that would indicate that the color additive may interact directly with cellular deoxyribonucleic acid (DNA). This finding would be consistent with a primary carcinogenic mechanism and would contradict the proponents' contention that a secondary mechanism is exclusively producing the treatment-related effects. Importantly, however, the absence of positive mutagenicity findings, by itself, does not necessarily rule out a primary carcinogenic mechanism for FD&C Red No. 3.

FDA has evaluated the proponents' submissions concerning the potential genotoxicity of FD&C Red No. 3, as well as other available publications concerning the potential genotoxicity of FD&C Red No. 3 in various assay systems. As discussed in more detail below, there are negative results for the mutagenicity of FD&C Red No. 3 in bacteria and mitotic gene conversion in yeast. However, there are also reports of positive and weakly positive results from in vitro and in vivo assays of FD&C Red No. 3 for chromosomal effects. In addition, both positive and negative results have been reported from in vitro gene mutation assays in cultured mammalian cells. In view of these data, the agency concludes that unresolved issues concerning the genotoxicity of FD&C Red No. 3 remain. Thus, based on the available data, the agency is unable to conclude that this color additive is not genotoxic.

1. In vitro and In Vivo Chromosomal Effects

Four studies reviewed by the agency used cytogenetic endpoints in either in vivo or in vitro mammalian cell systems to evaluate the potential genotoxicity of FD&C Red No. 3. In the two in vivo studies, FD&C Red No. 3 was tested for its capacity to induce micronuclei in mouse bone marrow cells. The first study is one submitted to FDA by Litton on behalf of CCMA, which is part of the primary data published in a paper by Lin and Brusick; the second study is one in a publication by Godbole and Vaidya.

Lin and Brusick concluded that FD&C Red No. 3 was negative for micronuclei induction. However, the authors performed statistical analysis of these data only at the 1-percent level. The agency believes that the 5-percent level of statistical significance, a level generally used for micronucleus data, should have been used to determine whether a toxic effect on chromosomes (clastogenic effect) occurred in this study (REf. 4). In fact, in responding to FDA's evaluation of this study, CCMA's consultant and the study author, Dr. Brusick, acknowledged that the low dose results for the male mice would reach significance if the 5-percent level of significance were used.

In the second study, Godbole and Vaidya concluded that FD&C Red No. 3 was positive for induction of micronuclei. Although the authors performed no statistical analysis of their data, when the agency considers the results of the Lin and Brusick study and the Godbole and Vaidya study in combination, these two studies show that there is a possible induction of micronuclei in vivo by FD&C Red No. 3. This conclusion is based on the fact that: (1) In the study reported by Lin and Brusick, there were increased micronuclei frequencies in both male and female mice (3-fold and 8-fold, respectively), and (2) in the Godbole and Vaidya study, the increased frequencies were dose-related and, at the highest dose tested, the frequency was 8-fold higher than the negative control.

The agency reviewed two in vitro cytogenetic studies of FD&C Red No. 3; these studies provide supporting evidence for the clastogenic effect observed in vivo. Ishidate et al., reported that FD&C Red No. 3 induced a weak response for chromosomal aberrations in Chinese hamster cells. In the other in vitro study, Rogers et al., reported that there was a significant increase ($p<0.01$) in micronuclei frequency in V79 cells treated with 300 microgram/milliliter (μg/ml) of FD&C Red No. 3.

CCMA rejects both of these apparently positive studies. Specifically, CCMA contends that the in vitro results obtained by Ishidate et al. do not necessarily indicate genotoxicity and may in fact be a technical artifact due to the high osmotic concentration of the color in the test system. FDA rejects this argument. First, the concentration of FD&C Red No. 3 used in this study was 0.6 milligram/milliliter (mg/ml), not 5 mg/ml as stated by CCMA. Second, the investigators in the Ishidate study were aware of the potential effect of osmotic pressure of the medium on the target cell population and considered such effects in setting a dose level. CCMA contends that Rogers' report on the increased micronuclei frequency in V79 cells cannot support the conclusion that FD&C Red No. 3 is clastogenic because it is inconsistent with the result of the in vivo micronucleus assay reported by Lin and Brusick discussed above. However, as shown above, when properly analyzed, the micronucleus test data reported in the Lin and Brusick paper demonstrated statistically significant positive clastogenic effects. Thus,

Rogers' report is not inconsistent with the results of other studies. The agency concludes, based on the combination of positive effects from the other studies and the lack of an adequate scientific basis for rejecting these positive results, that the available data indicate a possible genotoxic effect for FD&C Red No. 3.

2. Gene Mutation in Mammalian Cells in Culture

FDA reviewed three studies in which the color additive was tested for its capacity to induce gene mutation in mammalian cells in culture. In two studies, one conducted by Litton Bionetics and the other by Microbiological Associates and subsequently published by Cameron et al., L5178Y mouse lymphoma cells (TK locus) were used; in the third study, conducted by Rogers et al., the target line was V79 Chinese hamster lung cells using both the hypoxanthine-guanine phosphoribosyl transferase (HGPRT) and Na+, K+ −ATPase (ouabain) loci.

The results of the Litton study with FD&C Red No. 3 were evaluated as negative by both FDA and CCMA. In the V79 assays conducted and reported by Rogers et al., there was a greater than 4-fold increase in the number of TG^R mutants for the HGPRT locus at the 100 ug/ml dose level of FD&C Red No. 3 in the absence of hepatocytes; negative responses were obtained at the ouabain locus both with and without hepatocytes for metabolic activation. In the Microbiological Associates study, erythrosine was tested in L5178Y mouse lymphoma cells. This study was evaluated as positive by FDA in that postitive responses were obtained both in the absence and in the presence of an S9 metabolic activation system. Positive responses in this assay are known to represent either gene mutations or chromosomal aberrations (Ref. 5). However, the authors did not evaluate the mutant colonies in this study to determine whether they were the result of gene mutations or chromosomal aberrations.

CCMA questions the validity of the positive results in the Microbiological Associates study on the basis of the potency of the response. CCMA contends that agents with potencies equivalent to that obtained with erythrosine in this mouse lymphoma assay are positive in virtually all tests for genotoxicity. Also, CCMA's consultant contends that with the potency reported, which was roughly equivalent to that of ethylmethane sulfonate (EMS), the positive control, the color additive should give at least a weak response in the Ames test, and that FD&C Red No. 3 is negative in the Ames test.

FDA has considered this argument as the basis for questioning the validity of Microbiological Associates' study but finds the argument unsubstantiated. First, there is another example of a highly potent response with FD&C Red No. 3. In particular, Rogers et al., reported that the micronucleus frequency in V79 cells induced by FD&C Red No. 3 was equivalent to or somewhat higher than that obtained with the EMS positive control. Second, there are data that show that not every chemical that induces a positive response in the mouse lymphoma assay will be positive in the Ames test. For example, Fung et al., reported that both caffeic acid and chlorogenic acid were positive in the L5178Y mouse lymphoma assay and both chemicals were negative in the Ames test. The increase in mutant frequency over the solvent control for both of the these chemicals was of a magnitude similar to that observed with erythrosine (Ref. 6). Similarly, Rogers-Back et al., reported that acetaldehyde oxime, butanol oxime, 2-butanone oxime, and cyclohexanone oxime all induced positive responses in the L5178Y assay but were negative in the Ames test (Ref. 7).

The agency concludes that although there was a negative response in the Litton investigation using the L5178Y mouse lymphoma assay, the other positive response in this test system (the Microbiological Associates study), as well as the increase in mutants in the V79/HGPRT assay, indicate that FD&C Red No. 3 has the capacity to induce gene mutation in mammalian cells in culture.

3. Mutagencity in Bacteria

FDA reviewed a number of studies on the ability of FD&C Red No. 3 to induce mutagenic responses in *Salmonella typhimurium* and *Escherichia coli.* These studies were contained in a number of published papers as well as in a study by Litton Bionetics submitted to the agency. The agency agrees with CCMA that these various studies show that FD&C Red No. 3 does not induce a mutagenic response in either of these bacterial systems.

4. Genetic Studies in Yeast

FDA reviewed two studies of the genetic effects of FD&C Red No. 3 in yeast. First, the agency reviewed a study by Matula and Downie in which FD&C Red No. 3 was tested for its ability to induce reverse mutation in *Saccharomyces cerevisiae;* the authors concluded that the color additive induced a positive response. Based upon its review, the agency has concerns about various aspects of the methods used and considers the authors' conclusion tenuous.

The agency also evaluated data on mitotic gene conversion in *S. cerevisiae* by FD&C Red No. 3 which was contained in three other studies: a publication by Sankaranarayanan and Murphy, a report by Matula and Downie, and a study by Litton. With the exception of a reported positive response in strain D7 obtained by Matula and Downie, the data from these three studies were negative. Because of concerns about the methodology used in the study, the agency, based upon its own evaluation, finds the conclusion of Matula and Downie to be tenuous.

5. In Vitro Transformation

FDA evaluated a study by Price et al., who reported that FD&C Red No. 3 did not induce morphological transformation in Fischer rat embryo cells infected with rat C-type virus. The agency believes that these data are not reliable because the sample of FD&C Red No. 3 used in the study was autoclaved and thus may have undergone thermal degradation, possibly confounding the results.

6. DNA Damage in Bacteria

The agency reviewed a series of published reports on differential killing in bacteria that had been previously evaluated by the 1987 Panel. In such assays, killing of a repair-deficient strain of bacteria to a greater extent than the repair-proficient strain is deemed to be evidence that the compound may have DNA-damaging activity. The agency believes that the data from these tests are not reliable and should not be used in interpreting the genotoxicity of FD&C Red No. 3. This conclusion is based on the results from an international collaborative study in which short-term tests were evaluated as predictors for carcinogenicity. From the results of this collaborative study, it was recommended that the bacterial DNA-repair test not be used for carcinogen screening (Ref. 8). More importantly, FDA finds that it is impossible to assess transmitted genetic effects in these tests because the endpoint measured depends on the ability of the test chemical to kill the target cells.

7. Evaluation of Genotoxicity Data

Both the 1986 Panel and the 1987 Panel reviewed the available genotoxicity data for FD&C Red No. 3. In the course of considering the carinogenic risk associated with the use

of the color additive, the 1986 Panel found that "the results suggest that the dye is almost assuredly not a carcinogen acting directly on the genome." However, the 1986 Panel went on to say:

> The question of how the toxic effects of the compound, especially the phototoxic effect and the release of iodine are involved in some of the short-term effects seen is a critical, unanswered one. The effect of toxicity in the assays for genetic damage should be clearly separated from a direct effect on the genome, which is difficult to do for many of these observations since the exposures which are effective seem to be toxic ones.

In considering the data that a possible secondary mechanism of action exists for FD&C Red No. 3, the 1987 Panel also evaluated the genotoxicity data available at that time. The 1987 Panel concluded that, as a whole, the short-term tests indicate that there was little reason to suggest any mechanism of direct interaction of FD&C Red No. 3 with DNA.

FDA believes that its conclusion that there are important, unresolved questions concerning the genotoxicity of FD&C Red No. 3 is not necessarily inconsistent with the conclusions of both the 1986 Panel and the 1987 Panel. Importantly, neither of these Panels had access to and reviewed the publications by Rogers et al., and Cameron et al. (the Microbiological Associates study). The results reported in these two publications provide the principal basis for the agency's conclusion regarding the potential genotoxicity of FD&C Red No. 3.

After evaluation of the results from different genetic endpoints, the agency concludes that the available data demonstrate that FD&C Red No. 3 is not mutagenic in bacteria and does not induce mitotic gene conversion in yeast. Importantly, however, FDA believes that the available data show that FD&C Red No. 3 induces chromosomal effects and gene mutations in mammalian cells. In particular, a weakly postive response for chromosomal aberrations was observed in Chinese hamster cells in vitro, and there were positive responses for micronuclei induction in V79 cells in vitro and in mouse bone marrow polychromatic erythrocytes. There was also an increase in the mutant frequency in V79 cells at the HGPRT locus. In addition, erythrosine was reported to induce gene mutations at the TK locus in L5178Y mouse lymphoma cells both in the absence and presence of an S9 metabolic activation system in one study; a different study gave negative results in this assay.

The results from each genetic assay must be judged individually. Negative results from a large number of studies in which the same assay was used, e.g., the Ames' salmonella test, do not outweigh or resolve concerns raised by single or replicated positive responses in other genetic assay systems, e.g., the positive response for micronucleus induction in V79 cells. As a result of the findings on chromosomal and gene mutational endpoints in mammalian cells, FDA concludes that FD&C Red No. 3 has not been shown to be nongenotoxic.

D. Skin Penetration Study

CTFA sponsored an in vitro percutaneous absorption study designed to measure the ability of FD&C Red No. 3 to penetrate excised human skin under conditions simulating the use of the color additive in cosmetics. Subsequently, CTFA used this information to estimate the systemic exposure to FD&C Red No. 3 from its use in topical applications. In addition, based upon the results of this study, CTFA conducted an assessment of the risks associated with the cosmetic uses of the color additive as discussed below in section VI.

The in vitro percutaneous absorption study of FD&C Red No. 3 was conducted for CTFA by Dr. T. Franz at the University of Washington. On April 25, 1984, CTFA submitted its final report for the study to FDA. In this study, skin sections were obtained from the abdominal region of cadavers within 24 hours of death, and used immediately or refrigerated and used within 20 hours. Subcutaneous fat tissue and about half of the dermis was removed from each section prior to the section's fit into a 1.0 cm^2 Franz diffusion chamber. The penetration of ^{14}C-radiolabeled erythrosine, referred to as ^{14}C–FD&C Red No. 3 by the author, through human cadaver full thickness skin and isolated epidermis was determined for vehicles comprised of aqueous solutions buffered at ph=6 and 8; 50 percent ethanol/water; and oil in water emulsion. A lake preparation of the radiolabeled color additive was similarly tested in vehicles comprised of mineral oil, castor oil, and talc. The concentration of the color additive in the vehicle and the amount applied to the skin sample were chosen to approximate the usage of FD&C Red No. 3 in external cosmetics and drugs. Upon application of the vehicle containing the radiolabeled material to the surface of the skin sample, a receptor phase consisting of an isotonic saline solution of pH 7.4 at 37°C was sampled for radioactivity and replaced by fresh saline at intervals up to 96 hours. The report concluded that the greatest total percentage absorption of FD&C Red No. 3 results from use of the 50 percent ethanol/water vehicle and is approximately 0.9 percent of the applied dose for up to 72 hours after exposure.

CTFA's evaluation of the study pointed out deficiencies in the study. For example, the radioactivity measurements were near detection limits, and there was considerable variability observed in duplicate determinations with skin from the same donor. Nevertheless, CTFA used the study results to conduct risk assessments; for such assessments, CTFA estimated that the absorption of FD&C Red No. 3 was a maximum of one percent of the material in contact with the skin when applied in aqueous or ethanol/water solution or in oil/water emulsion.

FDA reviewed CTFA's percutaneous absorption study and determined that, although sound procedures were used in the study, the radiochemical purity of the test sample was not provided. Thus, the quantitative degree to which the ^{14}C moiety resided with 2',4',5',7'-tetraiodofluorescein (or principal component), or a similarly radiolabeled contaminant, could not be evaluated. Based upon the results of this study, FDA concludes that the external use of FD&C Red No. 3 does result in penetration of human skin by some portion of the color additive. Although the failure to characterize the radiochemical purity of the test sample precluded accurate measurement of the degree of penetration, the agency agrees with CTFA that, based upon measurements of the penetration of the ^{14}C moiety, FD&C Red No. 3 penetrates the human skin and does so at levels of less than 1 percent. However, the study provided little information as to the exact nature of the components of FD&C Red No. 3 that actually penetrate the skin.

The 1986 Panel also reviewed CTFA's study and concluded that the lack of information about radiochemical purity made the study of limited use in determining the degree to which FD&C Red No. 3 penetrates the skin.

E. The Secondary Mechanism of Carcinogenesis

As discussed extensively above, in the second chronic feeding study of FD&C Red No. 3 (IRDC Study No. 410–011), the color additive was shown to be a thyroid carcinogen in male rats. The proponents of FD&C Red No. 3 have not sought to dispute the results of the second chronic feeding study with data from yet another chronic study that purports to show an absence of toxic effects. Instead, the proponents have conducted a number of studies in an

attempt to establish the mechanism by which the color additive FD&C Red No. 3 exerts its carcinogenic effect. Although these studies have been many and have varied in their design, as shown in detail below, the data submitted by the proponents fails to establish a process by which FD&C Red No. 3 operates as a carcinogen.

The carcinogenic process is recognized as a complex, long-term, multi-step process that results from numerous causes (Ref. 9). Exposure to chemical substances or certain experimental conditions may result in the expression of neoplasia from either a primary (direct) effect, a secondary (indirect) effect, or both (Ref. 2). Unless sufficient evidence is provided to the contrary, FDA must assume that a carcinogenic effect at a given organ site is mediated by a direct effect of the test substance.

The proponents of FD&C Red No. 3 have hypothesized that this color additive mediates thyroid neoplasia or oncogenesis by a secondary effect; i.e., by disrupting the hormonal relationships that normally exist between the pituitary and the thyroid. As discussed below in section VI, the proponents contend that if FD&C Red No. 3 is shown to exert its oncogenic effect by a secondary mechanism, then the Delaney clause of the Color Additive Amendments (21 U.S.C. 376(b)(1)(B)) would not preclude the permanent listing of the color additive for the petitioned uses.

FDA has evaluated the studies, published literature, and reports from experts on thyroid physiology that were submitted by the proponents in support of their secondary mechanism hypothesis. FDA believes that such a secondary mechanism hypothesis has merit from a scientific perspective. However, based upon a fair evaluation of the data and information filed to date, FDA concludes that the existing scientific data are not adequate to demonstrate that such a mechanism is operating to produce the carcinogenic response associated with exposure to FD&C Red No. 3. Of course, if the proponents of this color additive developed new data that they believe support the safety of the color, the proponents may submit a new petition for listing the color which FDA will evaluate.

In order to facilitate an understanding and evaluation of the proponents' hypothesis, the agency has included below a discussion of the hormonal relationships that operate to sustain normal thyroid gland function and an explanation of how dysfunctions in various portions of the thyroid/pituitary axis can mediate changes in thyroid function and structure. This description is based on information available in the general literature (Refs. 10 and 11).

1. Normal Thyroid Gland Physiology

The thyroid is a small double-lobed gland in the human as well as the rat that lies at the base of the frontal portion of the neck on either side of the trachea. The thyroid gland secretes two hormones, thyroxine or 3,5,3',5',-tetraiodothryonine (T_4) and small amounts of 3,5,3,'-triiodothyronine (T_3). In the body, all of the T_4 and a small portion of the T_3 are synthesized in the thyroid. Most of the T_3 produced in the body is derived peripherally by conversion of T_4 to T_3. The biological activity of T_3 is considerably greater than T_4. These two hormones are supportive of many physiological functions in the body. For example, they are essential to normal intrauterine development of the central nervous system and skeleton of the fetus. These hormones also have an important influence on the rate of cellular metabolism so that food is converted into energy to support many cellular functions.

Within the thyroid, there are two types of functional cells: parafollicular or C-cells and follicular cells. The C-cells are responsible for secreting calcitonin, a hormone that is important in the control of calcium metabolism. The follicular cells form a single layer of cells lining each follicle and are responsible for the synthesis, storage, and secretion of T_4 and T_3. In the center of each follicle is a cavity filled with colloid. Colloid is composed of a glycoprotein, thyroglobulin, and is the storage site of T_4 and T_3.

The level of thyroid gland activity is principally regulated by the secretion of a third hormone, thyrotropin (or TSH), from the anterior pituitary. The body automatically adjusts the synthesis and release of the thyroid hormones, T_4 and T_3, based on the circulating level of T_3. If the levels of T_3 drop so low that the thyroid cannot supply its normal functions, then the anterior pituitary releases additional quantities of TSH. The thyroid gland responds to the additional TSH by releasing more T_4 and T_3, and at the same time synthesizes more T_4 and T_3.

This increased level of thyroid activity, also known as thyroid activation, usually results in a decrease both in the amount of colloid and in the size of the follicles. In this more active state, the follicular cells change size from short and cuboidal to tall and columnar; this increase in cell size is referred to as hypertrophy.

Hypertrophied follicular cells often show an increase in certain organelles indicative of increased functional activity.

If the thyroid stimulation continues for a prolonged period of time, the number of cells lining the follicles increases; in time, multiple layers of follicular cells develop. This increase in numbers of follicular cells is referred to as cellular hyperplasia. If the degree of hypertrophy and/or hyperplasia is great enough, the thyroid gland itself will increase in size and weight; this condition is referred to as glandular hypertrophy.

Under normal conditions, as the increased secretion of TSH causes increased synthesis and release of T_4 and T_3, the T_4 is converted to T_3 and a portion of the new T_3 is absorbed by the anterior pituitary. This absorption of T_3 lowers the release of TSH until the level of T_3 again falls to lower than required levels. This physiological response of increased glandular secretion of hormones mediated by a hormone from the pituitary, TSH, that is subsequently inhibited by the hormones whose release it stimulates, is a common mechanism to control glandular function in the endocrine system and is referred to as a "negative feedback" mechanism.

The thyroid hormones, T_4 and T_3, are synthesized in the follicular cells of the thyroid gland in a series of five steps.

(1) Inorganic iodide is actively concentrated in the thyroid gland.

(2) The trapped iodide is oxidized by the thyroid peroxidase enzyme.

(3) The oxidized iodide binds to tyrosyl residues (derived from the amino acid, tyrosine) with a specific thyroprotein, thyroglobulin, to form hormonally inactive precursor molecules, mono- and diiodotyrosine.

(4) The mono- and diiodotyrosine molecules couple to form either T_4 or T_3.

(5) The release of T_4 and T_3 occurs following the hydrolysis of the colloid protein, thyroglobulin, by lysosomal enzymes, proteases, and peptidases. (Lysosomes and subcellular structures that contain various types of hydrolytic enzymes that are involved in intracellular digestive processes).

The enzyme, 5'-monedeiodinase converts T_4 to T_3 by removal of iodine from the 5' position; this process occurs peripherally (outside the thyroid gland) in the kidneys and liver. Another peripherally located enzyme mediates the removal of iodine from the 5 position on the T_4 molecule, resulting in the formation of a biologically inactive form of T_3, known as reverse T_3 or rT_3. When the peripheral conversion of T_4 to T_3 is blocked by inhibition of 5'-

monodeiodinase, reverse T_3, along with T_4, accumulates.

Administration of goitrogens (antithyroid agents) as well as many kinds of environmental stimuli can affect the release of hormones from the thyroid gland. Antithyroid agents interfere with the synthesis of thyroid hormones and have the common property of producing a decrease in serum T_4 and T_3 levels, thereby causing the pituitary to increase production of TSH. This TSH then stimulates the thyroid gland. If release of TSH continues unabated at high enough levels for a sufficiently long time, hyperplasia will occur and the thyroid gland will hypertrophy (become enlarged), develop follicular adenomas and, in some cases, carcinomas (Ref. 12).

2. The Secondary Mechanism Hypothesis

The proponents' submission of May 9, 1988, contained a detailed discussion of their secondary mechanism hypothesis. In that and subsequent submissions dated January 12, 1989, and April 3, 1989, the proponents presented the following argument:

(1) The administration of 4.0 percent FD&C Red No. 3 inhibits the 5'-monodeiodinase in the rat liver and kidney, thereby decreasing serum T_3 concentrations and increasing serum T_4 and rT_3 concentrations.

(2) Decreased serum T_3 concentrations increase the responsiveness of the pituitary thyrotrophic (TSH-secreting) cells to endogenous thyrotropin releasing hormone (TRH) resulting in the increased secretion of TSH by the pituitary.

(3) The thyroid is stimulated by the increased levels of TSH to produce more T_4 and more T_3 to compensate for the continued deficit of T_3 caused by the inhibition of 5'-monodeiodination of T_4 by 4.0 percent FD&C Red No. 3. The continued inhibition of 5'-monodeiodination prevents a restoration of normal serum T_3 concentrations.

(4) If the inhibition of 5'-monodeiodination of T_4 by 4-percent FD&C Red No. 3 and the subsequent hyperstimulation of the thyroid by TSH continue for extended periods of time, follicular cell hypertrophy, hyperplasia, and adenoma may develop. The duration of inhibition is critical to the degree to which changes in follicular cell morphology occur. There is a progression of changes in follicular cell morphology resulting from sustained, increased stimulation of the rat thyroid

(5) If FD&C Red No. 3 operates through a secondary mechanism, a threshold dose, i.e., a dose having no effect on thyroid economy, can be established. Based upon the IRDC study, a threshold for the increased incidence of follicular cell hyperplasia was established at a dietary concentration (in male rates) of 0.5 percent (251 milligrams per kilogram per day (mg/kg/day)).

(6) FD&C Red No. 3 is not genotoxic, and thus, is not a direct-acting carcinogen.

(7) There are other substances, such as amiodarone, that act through a secondary mechanism, to produce effects similar to those observed for FD&C Red No. 3.

In sum, according to the proponents' secondary mechanism hypothesis, TSH, the endogenous harmone, mediates the oncogenic effect observed in the IRDC study in rats. Furthermore, there is likely to be a dose level of FD&C Red No. 3 that would not inhibit the conversion of T_4 to T_3; with adequate conversion of T_4 to T_3, the pituitary would not be stimulated to synthesize and release excess TSH. Thus, FD&C Red No. 3 could be safely used in products at levels below this "threshold" effect because it would not induce a TSH-mediated excess stimulation of follicular cells.

The sections below describe data from a number of short-term studies which the proponents believe support their conclusions regarding the proposed effects of FD&C Red No. 3 on thyroid/pituitary hormone levels and thyroid morphology. The proponents claim that the Bio/dynamics I study and the Hazleton study demonstrate the sustained elevations in serum TSH that ultimately resulted in adenomas at the end of the IRDC study. They postulate that if the Hazleton study had been continued to a 2-year termination, the TSH levels of the treated animals would have remained significantly above control levels. Thus, by inference, a tumorigenic response would not have developed in the IRDC study had TSH levels returned to normal or near normal.

The proponents also contend that the morphological evidence from the four principal studies (the IRDC, PRI, Hazleton, and Bio/dynamics I studies), in combination, show the progression of changes in thyroid follicular cell morphology in male rats fed the 4-percent dose. Specifically, at the end of the 2-month Bio/dynamics I study, the thyroid showed subtle evidence of follicular cell hypertrophy; in the 7-month Hazleton and 6-month PRI studies, the follicular cell hypertrophy was more pronounced; and finally, in the IRDC study, hypertrophy and hyperplasia were seen at the 1-year interim sacrifice and, after 2 years of treatment, follicular cell adenomas were found. The proponents further contend that this progression of changes in follicular cell morphology is consistent with a progression of changes caused by sustained elevation of serum TSH. In addition, the proponents contend that the results of the four major studies, when analyzed together, demonstrate that FD&C Red No. 3 is a weak goitrogen, a conclusion supported by the absence of significant changes in thyroid morphology until after 60 days exposure, even though serum TSH levels were elevated.

The proponents assert that the validity of their hypothesis is further supported by the existence of a wide variety of agents that induce rat thyroid follicular cell adenomas allegedly through a TSH-mediated secondary mechanism. In particular, they contend that amiodarone, a drug approved by FDA for human use, is most similar to FD&C Red No. 3 terms of its mechanism of thyroid impairment and eventual effects on the rat thyroid, because neither is genotoxic and both inhibit the peripheral metabolism of T_4 in rats, resulting in increased serum TSH concentrations. The proponents assert that differences in absorption or bioavailability explain why amiodarone induces follicular cell adenomas at much lower doses and in shorter time periods than FD&C Red No. 3 and, thus, appears to be more potent than FD&C Red No. 3.

The proponents also rely upon the fact that in the IRDC study, there was no significant increase in follicular cell hypertrophy, hyperplasia, or adenomas among female rats fed 4-percent FD&C Red No. 3. The proponents contend that this lack of a tumorigenic effect in females is further supported by published results showing that serum TSH concentrations in male rats are normally much higher than in female rats. Male rats are also known to demonstrate higher spontaneous background rates of thyroid follicular cell tumors than female rats. The proponents agree with the conclusion of the publication and attribute these increased incidences to the effects of the male hormone, testosterone, on serum TSH concentrations.

On the basis of the foregoing, the proponents conclude that the weight of the scientific evidence, including the findings of the four principal studies mentioned above, supports the hypothesis that, in the IRDC study, the follicular cell adenomas observed in the high-dose (4 percent) male rats resulted from a TSH-mediated secondary mechanism.

3. Short-term Studies in Rats

a. *PRI study.* The first study conducted to determine whether a change in hormonal mechanisms was responsible for the carcinogenicity of FD&C Red No. 3 was conducted under contract for CCMA by PRI. The objective of this study was to determine whether the thyroid follicular cell tumors found in the IRDC study were caused by (1) iodide resulting from the contamination of FD&C Red No. 3; (2) iodide available from the metabolism of FD&C Red No. 3; or (3) some other noniodide-related property of the color additive itself. This study was submitted to FDA in October 1983. As discussed below, FDA has concluded that the data from the PRI study are inconclusive with regard to the mechanism of action of FD&C Red No. 3.

The PRI study was 27 weeks long and contained seven treatment groups of rats. These groups received FD&C Red No. 3, a purified erythrosine, sodium iodide, FD&C Red No. 3 with added sodium iodide at two levels, control diet, or control diet with ethanol; the dietary level of FD&C Red No. 3 and erythrosine was 4 percent. Following administration of the test diet, serum concentrations of the thyroid hormones, as well as other parameters, were measured. Duplicate analyses were made: one analysis was performed on fresh blood shortly after withdrawal ("in life"); the other was performed on blood samples frozen until after the compound administration was completed ("serial").

PRI performed a statistical analysis of the data from this study and reported elevated serum levels of TSH and depressed T_3 serum levels. Apparently, the authors selectively relied on results of the "in life" serum sampling as the basis for these conclusions because their statistical analyses of the results of the "serial" serum sampling for TSH levels do not support these conclusions.

FDA's statistical analyses of the "in life" samples of the treated male animals demonstrated that after 27 weeks, there was a statistically signfiicant increase in the level of T_4 ($p=0.0001$), compared with controls, only for those animals receiving FD&C Red No. 3 or erythrosine. There was also an increase in the level of TSH that was of borderline statistical signifiance ($p=0.04$) and a slight decrease in the level of T_3. The "serial" assays of these same serum samples showed no elevation of TSH ($p=0.316$) or depression of T_3 ($p=0.316$); however, the levels of T_4 were still elevated to a statistically significant degree ($p<0.0001$), compared with controls. The agency also determined that neither the sodium iodide nor the diet plus ethanol groups demonstrated comparable effects on T_3, T_4, or TSH. Thus, the data from this study do not sustain the proponents' hypothesis that sodium iodide mediated the response observed in the IRDC study.

The proponents of FD&C Red No. 3 claim that morphological data from the PRI study support their hypothesis of an operative secondary mechanism. Specifically, the proponents assert that there was evidence of thyroid gland activation as indicated by follicular cell hypertrophy in the thyroids of animals that received FD&C Red No. 3 in their diet.

FDA evaluated electron micrographs of follicular cells from the thyroid glands of male and femals rats fed the control diet and those fed the 4-percent FD&C Red No. 3 diet in this study. That examination revealed no conspicuous or consistent treatment-related differences in the ultrastructural appearance of these organelles, other than an increased concentration of lysosomes. The significance of these results is discussed below in section V.

b. *Hazleton study.* Hazleton Laboratories conducted a second major study under contract for CCMA (Project No. 6145–101). The study was designed to determine the influence of 7 months of continuous exposure to FD&C Red No. 3 on thyroid function in rats. The initial report for this study was submitted to the agency in December 1984; the final report on the ultrastructural morphometric evaluation was submitted in April 1988.

One primary objective of this study was to determine whether the changes in thyroid physiology and morphology induced by FD&C Red No. 3 could be reversed by the administration of T_3. According to the secondary mechanism hypothesis, administration of T_3 to rats receiving FD&C Red No. 3 should mediate a reversal of both the TSH-stimulated thyroid proliferative changes and of the hormonal changes (that is, administration of T_3 should result in decreased serum levels of T_4, rT_3, and TSH). The hypothesis posits that excess TSH causes follicular cell hypertrophy; the hypothesis further predicts that administration of T_3 would cause the follicular cells to return to a normal, unhypertrophied state.

In the Hazleton study, serum concentrations of the thyroid hormones and iodine excretion were measured after administration of FD&C Red No. 3 to rats. There were 6 groups of animals, with 15 rats of each sex in each group; the dietary levels of the color additive were 0.0, 0.25, 0.5, 1.0, 2.0, and 4.0 percent. During the last month of the study, five rats per sex from each treatment group received exogenous T_3 by injection. At the study's conclusion, thyroid glands of all animals on test were examined by electron microscopy. Also, as mentioned below in the discussion on metabolism, in vitro deiodination studies in liver and pituitary were also performed.

The proponents and the agency agree that male rats in the 4-percent dose group had decreased mean body weights, a greater food consumption, a greater excretion of total iodine, and greater mean thyroid weights. In terms of the hormonal results, the agency and the proponents agree that the male rats showed an increase in serum T_4, a decrease in serum T_3, and an increase in serum rT_3, compared with controls. FDA and the proponents also agree that the mean serum TSH values were higher in treated animals than in control animals, although the difference was not statistically significant for the entire period of the study.

The proponents claim that the results of this study support a conclusion that administration of FD&C Red No. 3 results in an increase in serum TSH. The proponents further assert that the increase was difficult to confirm statistically because of diurnal variation or compensation by the thyroid gland from animal to animal. The significance of the proponents' conclusion is discussed below in section V.

In this same study, morphological evidence of thyroid activation induced by FD&C Red No. 3 was evaluated by examination of ultrastructural changes in the thyroid follicular cells. Specific parameters, including cellular hypertrophy and increased numbers of lysosomes, provide evidence of functional stimulation of the thyroid gland. The proponents concluded that the feeding of FD&C Red No. 3 for 7 months resulted in a dose-dependent hypertrophy of the thyroid follicular cells.

FDA reviewed the electron micrographs from this study and was unable to confirm that administration of the color additive for 7 months resulted in cellular hypertrophy. Subsequently, the proponents submitted quantitative measures of the cells. The agency agrees that these measurements of cell size support an interpretation of cellular hypertrophy, provided that the sampling of tissue for the electron micrographs was unbiased. However, the proponents' submission did not describe the manner of selecting regions for the electron micrographs. Thus, the agency cannot assume that the sections chosen were

representative of each thyroid gland as a whole for either the control or the FD&C Red No. 3-treated groups. In addition, no evidence of any further progressive proliferative changes, such as hyperplasia that would be expected to lead to tumorigenesis were presented by the proponents. The significance of these findings is discussed below in section V.

The proponents and the agency agree that in this study, the follicular cell hypertrophy regressed upon administration of T_3 to a selected group of rats. However, based upon its review, the agency concludes that the follicular cells did not fully regress to a normal state because additional lysosomal bodies remained in the follicular cells at the termination of the study. The interpretive significance of these conclusions is also discussed below in section V.

c. *Witorsch study.* The proponents submitted an unpublished study by Witorsch et al., in November 1984. The purpose of this study was to determine whether dietary FD&C Red No. 3, sodium iodide, or fluorescein disrupted the normal thyroid-pituitary feedback relationship by producing a pituitary gland in rats that was hyperresponsive to TRH. The proponents postulated that FD&C Red No. 3 would lower the production of T_3 and would reduce the feedback inhibition of the pituitary that is mediated by normal levels of T_3 and result in pituitary hyperresponsiveness to TRH. Such evidence would support the hypothesis of raised TSH levels following administration of the color additive.

In this study, the animals were fed dietary FD&C Red No. 3 at levels of 0.0, 0.5, 1.0, and 4 percent (2464 mg/kg/day); sodium iodide at 100 mg/kg/day; or fluorescein at 1000 mg/kg/day for 3 weeks. The study measured TSH, T_3, T_4, and T_3 resin uptake before and after an intravenous bolus of TRH.

Both the proponents and FDA agree that these results support the conclusion that neither sodium iodide nor fluorescein produced hormonal changes in the animals on test. The proponents claim that the results in the 4-percent FD&C Red No. 3 group showed an increase in serum T_4, an enhanced TSH response to administration of TRH, an increase in the level of basal serum TSH that was not statistically significant, and no significant changes in the free T_3 index. The proponents minimize the significance of these results and assert that moving the animals during the study confounded the study's results. The agency is not convinced by this claim because there are no data or arguments presented to support it.

In addition, the agency analyzed these same data. However, unlike the proponents, the agency compared the changes mediated by FD&C Red No. 3 only after correcting each hormone measure for its baseline (or starting) value. Following this correction, the agency compared serum T_3, free T_3, and T_3 resin uptake for differences between control and treated groups and found that serum T_3 and free T_3 were increased slightly after administration of FD&C Red No. 3. Thus, the data from this study demonstrate that, although there is a very slight increase in serum T_4 levels, there is also an increase in serum T_3 in both free and bound forms. Also, comparison of TSH values between the control and 4-percent-treated groups demonstrates no significant increase in TSH with TRH provocation. Thus, the agency concludes that TRH provocation does not result in a hypersecretion of TSH associated with feeding FD&C Red No. 3. The significance of these findings is discussed below in section V.

d. *Bio/dynamics I study.* In January 1989, CCMA submitted the results of a 60-day study conducted under contract by Bio/dynamics (Project No. 88–3320). This study was designed to show that administration of FD&C Red No. 3 alters thyroid hormone economy in the male rat and results in increased stimulation of the thyroid by TSH. The study design sought to establish a dose level at which no compound-related effects could be measured. The study was also designed to minimize the animal-to-animal variations that allegedly accounted for the lack of significance in the changes in TSH values in the Hazleton study.

Male Sprague-Dawley rats (160 per treatment group) were fed 0.0-, 0.25-, or 4-percent FD&C Red No. 3 for up to 60 days. The proponents concluded that administration of FD&C Red No. 3 at the 4-percent level resulted in (1) a significant elevation of TSH, rT_3, and T_4 levels above the control values throughout most of the study, and (2) a significant decrease in serum T_3 throughout the study as compared with controls. The report claimed that the hormonal levels for the 0.25-percent group were unaffected by the experimental treatment.

FDA believes that the proponents used inappropriate methods of statistical analysis to evaluate these hormonal results. Specifically, the proponents used an analysis of variance (ANOVA); this approach is appropriate where there are equal population variances for all dose-day combinations. Such equal population variances were not present in this study. For example, at day 60, there is a 37-fold greater variance in rT_3 for the 4-percent group as compared with the control group. This large variance due to thyroid and pituitary hormonal changes induced in the 4-percent group reduces the probability of detecting a statistically significant difference in the levels of these same hormones when comparing the 0.25-percent and control groups.

The agency reanalyzed the results from this study, using logarithmic transformations of the data, a statistical method that accounts for the unequal population variances. In addition, the agency's analysis compared only the 0.25-percent and control groups using an ANOVA. Based on these analyses, the agency concludes that administration of FD&C Red No. 3 at the 0.25-percent as well as the 4-percent levels resulted in (1) a statistically significant increase of TSH, rT_3, and T_4 levels above the control values throughout most of the study, and (2) a statistically significant decrease in serum T_3 as compared with controls at day 30 ($p < 0.05$) for the 0.25-percent dose and throughout the study for the 4-percent dose. These effects were dose-related. Furthermore, the qualitative response patterns of these effects for the two dose levels were similar across time. The qualitatively similar pattern of hormonal responses supports the conclusion that both the 0.25-percent and the 4-percent doses mediated changes in thyroid hormones.

Morphologic changes were also evaluated in this study. CCMA reported and FDA concurs that morphometric data show that, in the period 0 to 30 days, the effects observed in the thyroid were decreased follicle size, decreased colloidal area, and decreased follicular cell height compared with the control group. At 60 days, these observed effects were reversed, as evidenced by increased follicle size, increased colloidal area, and increased follicular cell height compared with the control group.

FDA concludes that the results from this study are paradoxical, and, thus inconclusive. The proponents attempt to explain the lack of morphological changes at 60 days by arguing that 60 days was apparently not sufficient time to permit the development of the changes in follicular cells that could be detected by light microscopic techniques. They further suggest that the observations may be due in part to the effects of the iodide available from the color additive because an increase in the organic iodine content of the thyroid decreases the thyroid's responsiveness to TSH. The significance of these results is discussed below in section V.

4. Metabolism Studies

The proponents submitted several studies to support that part of the secondary mechanism hypothesis that FD&C Red No. 3 interferes with the conversion of T_4 to T_3, thus causing reduced serum T_3 levels and elevated serum T_4 levels. These studies included data on the absorption, distribution, and metabolic fate of FD&C Red No. 3 when administered to rats.

a. *Ruiz and Ingbar rat liver study.* The proponents submitted a 1982 publication by Ruiz and Ingbar that was designed to show that administration of FD&C Red No. 3 to rats causes a dose-related inhibition of T_4 metabolism (i.e., an inhibition of the 5'-monodeiodination of T_4 to yield T_3). The degree of inhibition of the conversion of T_4 to T_3 was determined by measuring the relative rates of conversion of ^{125}I–T_4 to ^{125}I–T_3. (^{125}I is a radioisotope of iodine.)

Two sets of experiments were conducted, one without tissues and the other utilizing rat liver homogenates derived from rats treated in vivo with FD&C Red No. 3. In the set of experiments without tissues, the tissue-free control showed no ^{125}I–T_4 degradation. A zero-time sample with erythrosine underwent extensive degradation (21 percent), while erythrosine added to another sample with a longer, but unspecified, time of exposure demonstrated marked degradation that was decreased by protection from light or addition of serotonin.

Due to an apparent light-activated effect in the nontissue experiments, a second set of experiments was performed using erythrosine or fluorescein and rat liver homogenates. In this study, male rats were administered erythrosine by intraperitoneal (i.p.) injection. Only the liver homogenates from rats treated with i.p. erythrosine demonstrated a dose-dependent reduction in the rate of conversion of ^{125}I–T_4 to ^{125}I–T_3 and ^{125}I. The proponents claimed that this result demonstrates that erythrosine, not fluorescein, is the active component affecting the conversion of T_4 to T_3 and thus, that this study shows that rats that receive FD&C Red No. 3 have a dose-related inhibition of T_4 metabolism through inhibition of the 5'-monodeiodiation of T_4 to T_3.

The agency concludes that the second phase of this study offers some limited support for the postulate that FD&C Red No. 3 inhibits the peripheral conversion of T_4 to T_3. However, this evidence is not definitive for the following reasons. First, in this study, FD&C Red No. 3 was administered intraperitoneally (i.p.). This difference is significant because, for a given dose, i.p. administration results in substantially larger systemic exposure than the oral route. Thus, the study does not provide evidence that FD&C Red No. 3, when administered orally, effectively inhibits T_4 metabolism. Second, this study does not provide evidence regarding effects on T_4 metabolism with continuous, prolonged exposure to FD&C Red No. 3 and thus, does not account for any physiologic compensatory mechanisms available to the animal.

b. *Metabolism segment of the Hazleton study.* The Hazleton study discussed above (Project No. 6145–101) included a segment designed to establish the stimulation mechanism of TSH release from the rat pituitary and to show the manner in which the peripheral metabolism of T_4 may influence circulating levels of T_4 to T_3 following administration of FD&C Red No. 3. In particular, the study measured the conversion of ^{125}I–T_4 to ^{125}I–T_3 in pituitary and liver homogenates of rats fed 0.0-, 0.5-, 1.0-, 2.0-, and 4.0-percent FD&C Red No. 3 for 7 months.

The proponents concluded that the liver homogenate data support a dose-dependent inhibition of the formation of T_3 from T_4. Further, they claimed that the lack of inhibition of T_4 metabolism in the pituitary is due to analytical problems associated with the small quantity of pituitary tissue available.

The agency does not agree with the proponents' overall conclusion about this portion of the Hazleton study. Although the agency agrees with the proponents' conclusion concerning the liver homogenate data, FDA believes that the proponents have applied these data selectively in that the data from the pituitary portion of the experiment have not been explained or used by the proponents. This failure is significant because the pituitary results contradict the proponents' hypothesis. The proponents rejected the pituitary results for methodological reasons alone. It is not clear that the methodological shortcomings raised by the proponents are sufficient to invalidate the pituitary results. Thus, the study provides only limited evidence that FD&C Red No. 3 inhibits the conversion of T_4 to T_3.

c. *ADME study.* CCMA sponsored a study of the bioavailability of FD&C Red No. 3 in rats. This study was also conducted by Hazleton Laboratories America, Inc. On March 4, 1986, CCMA submitted a preliminary report on this study. The final report, called the ADME study (absorption, distribution, metabolism, and excretion), was not submitted to the agency until February 27, 1989.

In this study, the tissue distribution and urinary and fecal excretion of ^{14}C-labeled erythrosine and ^{125}I-labeled erythrosine were studied after oral administration to rats. Male and female adult Sprague-Dawley rats received ^{14}C- or ^{125}I-labeled erythrosine by gavage after consuming pretreatment (induction) diets containing 0.0-, 0.5-, or 4-percent FD&C Red No. 3.

The study results showed that most of the radioactivity was eliminated in the feces. The liver contained the highest level of radioactivity; low levels of radioactivity were found in blood and tissues. No detectable levels of ^{14}C were found in the thyroid gland, but the gland did contain measurable residues of ^{125}I. The excretion patterns and the magnitude of the radioactive residues in the liver, kidney, and blood were not dependent on sex, radiolabel, or the amount of FD&C Red No. 3 in the diet.

The results of the ADME study suggest that the thyroid gland was saturated with iodide prior to administration of the radioactive material. This conclusion is evidenced by the observation that ^{125}I residues in the thyroid gland in the 4-percent (high dose) radiolabeled erythrosine group were not significantly higher than those in the 0.5-percent (low dose) radiolabeled erythrosine group. Therefore, the percent of ^{125}I residue/mg of thyroid decreased with increasing amounts of FD&C Red No. 3 administered in the diet prior to radiolabeled test dose. Small amounts of lower halogenated fluoresceins were detected in the urine, plasma, kidney, and liver.

The proponents asserted that these results show that less than 5 percent of the ingested FD&C Red No. 3 entered into the enterohepatic circulation, with none accumulating in the thyroid, 0.2 percent accumulating in the liver, and 0.02 percent accumulating in the kidneys. Thus, the proponents concluded that the pattern of distribution demonstrates that FD&C Red No. 3 is primarily metabolized in the liver and kidney. The proponents further concluded that the nonabsorbed portion of FD&C Red No. 3 is stable after ingestion as evidenced by the fact that there was little deiodination of the erythrosine to lower iodinated fluoresceins and iodide in the feces.

The agency notes that the analytical data suggest that the radiolabeled material is qualitatively similar to FD&C Red No. 3. Moreover, based upon these results, the agency concludes that, in rats, (1) less than 25 percent of an administered dose of FD&C Red No. 3 is absorbed, with the remainder being

excreted in the feces; (2) the absorbed material enters the enterohepatic circulation, where a small portion of the tetraiodofluorescein component is deiodinated to di- and triiodofluoresceins; (3) the iodine removed from the tertaiodofluorescein ultimately accumulates in the thyroid gland; (4) less than 0.1 percent, if any, of an administered dose of FD&C Red No. 3 is absorbed by the thyroid; (5) the fate of organic impurities related to the resorcinol intermediate in the administered FD&C Red No. 3 is not known; and (6) the absorption, distribution, and metabolism of FD&C Red No. 3 is not sex-dependent.

Thus, the agency and the proponents agree that the amount of FD&C Red No. 3 absorbed by the gastrointestinal system is limited, with most of the material excreted unchanged in the feces. Of the limited amount of FD&C Red No. 3 that is absorbed, some is deiodinated. The deiodinated products are excreted primarily in the urine.

The agency is aware that the 1987 Panel reviewed a report for the ADME study. However, because much of the raw data was not available for the Panel's review, the Panel's evaluation is not discussed here.

The significance of the results of the ADME study are discussed below in section V.

5. IRDC Study Interim Sacrifice Data

According to the proponents' hypothesis of a secondary mechanism, follicular cell hyperplasia, a precursor of tumor formation, should be demonstrated in a chronic study. Because the IRDC study included a 1-year interim sacrifice of 10 rats of each sex, the proponents recently offered evidence from that interim sacrifice to support their hypothesis of a secondary carcinogenic mechanism. In particular, in April 1989, CCMA asserted that 9 of 10 male rats in the 4.0-percent dose group that were sacrificed at 1 year had proliferative changes of thyroid follicular cells ranging from moderate to severe hypertrophy and hyperplasia. This assertion was based upon a September 1982 report authored by a consultant pathologist.

FDA disagrees with CCMA's findings on this point. Specifically, in its own histopathological examination of the thyroid glands of the rats from the interim sacrifice, FDA observed no thyroid hyperplasia. Moreover, the thyroid weights of the interim sacrifice animals were not increased. This finding suggests the absence of widespread cellular hyperplasia.

The agency's conclusion on this point is consistent with the previous position taken by CCMA on the interim sacrifice data. In particular, as late as May 1988, CCMA's interpretation of the interim sacrifice reported only hypertrophy (and no hyperplasia) in the high-dose male rats sacrificed during the course of the second IRDC study. Furthermore, in a 1987 publication, Borzelleca, Capen, and Hallagan reported that, in both IRDC studies, there were no compound-related gross or microscopic changes in the 10 rats of each sex from each group sacrificed and necropsied at 1 year. Significantly, Borzelleca, Capen, and Hallagan did not report that any of the treated rats sacrificed at 1 year showed evidence of thyroid follicular cell hyperplasia. The significance of these data is discussed below in section V.

6. Human Studies

The proponents submitted four studies to show the absorption and metabolism of FD&C Red No. 3 and its effect on thyroid function in humans. Based on their interpretations of the results of these studies, the proponents claim that there is no basis for inferring a risk of thyroid oncogenicity in humans from FD&C Red No. 3. The agency has evaluated these submissions as discussed below and concludes that these studies offer no evidence that would alter the agency's conclusion that FD&C Red No. 3 has not been shown to be safe.

a. *Bioavailability of FD&C Red No. 3.* The proponents submitted two unpublished and undated studies on the bioavailability of erythrosine in humans: "Studies of the Bioavailability and Metabolism of Ingested Erythrosine in Man," by S. Ingbar et al. (Ingbar I study), and "Further Studies of the Absorption and Metabolism of Ingested Erythrosine in Man," by S. Ingbar et al. (Ingbar II study). These are reviewed below; the significance of these studies is discussed below.

i. *Ingbar I study.* Ingbar et al., conducted a study to determine the extent of absorption and metabolism of FD&C Red No. 3 in humans. In the study, five healthy volunteers (four males and a female) hospitalized in a metabolic ward were given a daily milk shake preparation containing FD&C Red No. 3 at doses of 0 milligram-per-day (mg/day) for the first week, 5 mg/day for the second week, 10 mg/day for the third week, and 25 mg/day for the fourth week. Blood was drawn every other day and analyzed for T_4, T_3, TSH, resin T_3 uptake, total iodine, protein-bound iodine (PBI), and erythrosine. Additional blood samples were obtained every fourth day for the measurement of various serum chemistries (blood urea nitrogen, creatinine, glucose, sodium, potassium, chloride, carbon dioxide, calcium, phosphorus, serum glutamic-oxaloacetic transaminase (SGOT), alkaline phosphatase, lactic dehydrogenase, bilirubin, uric acid, total protein, albumin, and cholesterol). Throughout the study, complete 24-hour urine samples were collected to measure total iodine and erythrosine excretion.

The authors reported an increase in serum total iodine and serum PBI accompanied by little or no effect on urinary iodine excretion. The authors concluded that the most plausible explanation for these results was that a small portion of orally administered FD&C Red No. 3 is absorbed and that this absorbed fraction deiodinates slowly. The proponents agree with these conclusions.

The agency agrees with the authors' interpretation but notes that the test material used in the study was not tested with respect to its chemical identity and purity. Absent such information, the agency is unable to determine whether or not the administered erythrosine was equivalent to certified FD&C Red No. 3.

Based upon this study, FDA further concludes that when erythrosine in a dose of 10 mg/kg in an aqueous solution is administered for a few days, at least a small amount of the erythrosine is absorbed by the body, resulting in an elevation of the PBI concentration. It is unknown to what extent this erythrosine is being deiodinated. The significance of these results is discussed below.

ii. *Ingbar II study.* Ingbar et al., conducted a second study using radiolabeled erythrosine to investigate the absorption and metabolism of FD&C Red No. 3 in humans. In this study, a single dose of ^{131}I erythrosine was given to five human subjects using several different dosing protocols, which varied in the amount of administered materials and the vehicles used. Throughout the study, all subjects received potassium iodide to saturate the thyroid with iodide and thereby block the uptake of ^{131}I by the thyroid. Three subjects were given 75 or 80 mg of erythrosine containing 50 microcuries (μCi) of ^{131}I in the same milkshake preparation used in the Ingbar I study. Administered erythrosine consisted of unlabeled erythrosine as a component of the drink mix, with added ^{131}I labeled erythrosine. Because there was some concern that erythrosine might bind to protein in the milkshake preparation, three subjects were given 75 mg of erythrosine containing 50μ Ci of ^{131}I in lemonade. At the outset of the study, the subjects were placed in a whole body radiation counter in order to obtain a

zero time radiation level. Total ^{131}I body content was obtained at intervals of 1 to 3 days.

In all five individuals (or six cases, because one individual participated in both aspects of the study), whole body ^{131}I content dropped to 1 percent of the administered dose in 7 days. In the four subjects monitored for 14 days, the authors found that there was a fast phase and a slow phase of disappearance of the radioactive iodine. After an initial 24-hour delay, the majority of fecal excretion of ^{131}I occurred between days 2 and 3; recoveries ranged between 80 and 103 percent of the administered dose. Levels of radioactivity in serum were only slightly above background. The maximum cumulative urinary excretion was no more than 0.4 percent for any subject; the majority of the urinary excretion of radioiodine occurred in the first 48 hours for all but one subject. The authors calculated that the potential initial body retention of erythrosine was 1.2 ± 0.4 percent and that there was residual radioactivity at 14 days which was concentrated in the area of the liver. The authors calculated a half time for the slow phase of disappearance to be 8.4 ± 2.1 days. The authors noted no differences in the absorption of erythrosine between the milk shake and lemonade groups. The authors also reported that there were no effects from the eryhthrosine on serum T_4, T_3, rT_3, or TSH concentrations.

Based upon these results, the proponents concluded that only a very small fraction of ingested erythrosine, on the order of 1 percent or less, was absorbed from the gastrointestinal tract of man, and that there were no effects on serum T_4, T_3, rT_3, or TSH concentrations.

For three separate reasons, FDA believes that these data cannot be used to assess the potential biological effects of FD&C Red No. 3. First, as with the Ingbar I study, the authors did not provide the data necessary to characterize adequately either the radiolabeled or unlabeled components of the test sample. However, based on the combined observations of (1) increased PBI; (2) accumulation of ^{131}I in the region of the liver; and (3) low levels of urinary output of iodide, the agency concludes that it is likely that both organic and inorganic forms of iodine are absorbed. Second, the study did not characterize which specific chemical species were absorbed, how the absorbed species were modified in the body, which chemical species remained in the region of the liver, or how the absorbed material interacted with normal thyroid functions, e.g., the conversion of T_4 and T_3, or the binding of T_3 to specific pituitary receptors. Third, the saturation of the thyroid with iodide prior to administration of erythrosine prevents a determination of the hormonal effects that may be attributed solely to uptake of iodide from erythrosine by the thyroid. Thus, the form and absolute amount of organically bound iodine, after absorption, and its potential to alter functions of the pituitary-thyroid axis, cannot be determined from these experiments.

The agency notes that the thyroid hormones, T_4 and T_3, are biologically effective in microgram quantities per day and that very low concentrations of compounds having structural similarities to thyroid hormone may interfere with the action or metabolism of thyroid hormone. Thus, even if the authors are correct that only about one percent of the administered dose of an uncharacterized radiolabeled erythrosine preparation was absorbed, these results do not rule out the potential for a biological effect of FD&C Red No. 3.

b. *Effects of administration of FD&C Red No. 3.* The proponents submitted two publications that address the effects of ingestion of FD&C Red No. 3 on the human thyroid: Gardner et al. (1987), "Effects of Oral Erythrosine (2',4',5',7'-Tetraiodofluorescein) on Thyroid Function in Normal Men" (the Gardner studies) and Paul et al. (1988), "The Effect of Small Increases in Dietary Iodine on Thyroid Function in Euthyroid Subjects" (the Paul study). These studies are discussed below.

i. *The Gardner studies.* These two separate studies were designed to assess the effects of oral administration of FD&C Red No. 3 (identified as erythrosine by the authors). One study was designed to determine whether the 200-mg/day dose of FD&C Red No. 3 affects the pituitary-thyroid axis; the second study was designed to determine the no-observable-effect level (NOEL) for FD&C Red No. 3 in man. (The proponents refer to these two investigations as the single "Gardner study".) Three groups (10 subjects each) of apparently healthy men between the ages of 22 and 38 with mean age of 27 years received FD&C Red No. 3 orally in single doses of 200, 60, or 20 mg/day for 14 days. The study with the 20- and 60-mg doses was done about 4 months after the 200-mg dose study. Serum T_4, T_3, rT_3, TSH, PBI, total iodide, serum T_3,-charcoal uptake, and 24-hour urinary iodide excretion were measured on days 1, 8, and 15. TRH stimulation tests of TSH secretion were performed on days 1 and 15.

FDA received two versions of the Gardner studies. The first submission was an unpublished report received in April 1985 that properly presents these data as the results of two separate studies. The second submission was a 1987 publication received in April 1988 that states that 30 men were equally divided into three treatment groups, thus implying a single study designed to investigate the effects of FD&C Red No. 3 in human subjects.

The authors concluded that there were no significant changes in serum T_4, T_3, rT_3, and T_3-charcoal uptake values at any dose. Significant dose-related increases in serum total iodide and PBI concentrations occurred with all three doses; significant dose-related increases in urinary iodide excretion occurred with the 60- and 200-mg/day doses. The authors also reported that the mean basal serum TSH concentration in men receiving 200 mg/day erythrosine increased significantly ($p < 0.05$) and the mean peak TSH increment after TRH stimulation increased significantly ($p < 0.05$). They attributed this increase in TSH secretion to the antithyroid effect of increased serum iodide concentrations, rather than to a direct effect of the color on thyroid hormone secretion or peripheral metabolism. The authors concluded that there is an effect at the 200-mg/day dose and that the 60-mg/day dose level is a NOEL.

The proponents agree with most of the authors' conclusions; however, they dispute the authors' conclusion about TSH levels. Specifically, although the proponents agree that there was an increase in TRH-stimulated TSH secretion in the 200-mg/day group, the proponents do not agree that there was a corresponding increase in basal TSH levels. This disagreement hinges on the appropriateness of the statistical methods used for assessing changes in basal TSH levels. In support of their position, the proponents rely upon an analysis of the data by Crump and Farrar whose analysis employed the method of Mantel-Haenzel modified to analyze continuous variables.

As discussed below, FDA reevaluated the design of this study and the methods of statistical analysis and concludes that there was a significant increase in both basal and TRH-stimulated TSH secretion in the 200-mg/day group. In addition, the agency finds that the submitted evidence cannot be used to establish the 60-mg/day dose of FD&C Red No. 3 as a NOEL because the study design did not provide sufficient statistical power to establish a NOEL.

("Power" refers to the ability of a test to obtain a statistical significance of the difference observed in the study (Refs. 13 and 14).) If the experimental and control groups do not in fact have different outcomes, an apparent difference may nevertheless be observed by chance. This phenomenon is known as Type I error or "alpha". In most cases, the agency requires an alpha value of at least 0.05 to ensure that the probability of the event occurring by chance is not more than 5 out of 100. There is also a possibility that a real difference between experimental and control groups may go undetected by statistical analyses; this is a Type II error or "beta". In most cases, the agency requires that the power calculation have a value of 80 percent in order to ensure that an effect would be detected by statistical analysis.)

(1) *Changes in basal TSH.* Because the data in the Gardner study were collected four months apart and the serum samples were analyzed by different laboratories, FDA believes that the 200-mg dose experiment must be treated as an independent study, separate from the study of 20-mg/day and 60-mg/day doses. Different dosages are usually administered simultaneously so as to minimize confounding effects in a study. If all doses are administered at the same time, one test for differences between dose groups with an analysis such as the one used by Crump and Farrar. The agency rejects the use of this approach here because, as discussed above, FDA considers the 200-mg/day dose group to be a separate study. Aside from the differences in dose, there may be other, unobserved factors that differed between the 200-mg/day dose group and the other two dose groups. Therefore, the agency believes that a test comparing the 200-mg/day dose group to the other dose groups is meaningless. A paired t-test analysis (a statistical method used by the authors) tests for an effect within a dose group. This is a more appropriate method for analyzing data from the 200-mg dose group. Accordingly, FDA agrees with the authors' conclusion that there was a significant increase in basal TSH concentration. Furthermore, the agency believes that the statistical test used by Crump and Farrar does not have sufficient statistical power to give meaningful results. FDA calculated the statistical power corresponding to a test similar to that used by Crump and Farrar, and found that the chance of obtaining statistical significance (at the 0.05 level) is less than 20 percent. Therefore, the agency accepts the conclusion reached by the study authors that the 200-mg/day dose of FD&C Red No. 3 has a statistically significant effect on basal TSH, and rejects the contrary conclusion of the proponents.

(2) *No-Observable-Effect Level.* Although FDA agrees that the results of the Gardner studies do not show statistically significant changes in either TSH or TRH-evoked TSH for doses of 60 and 20-mg/day, the agency believes that these studies do not have adequate statistical power to establish the lack of an effect of FD&C Red No. 3 on thyroid functions at doses lower than 200 mg/day. Based upon its calculations, FDA determined that the chance of detecting a statistically significant (at the 0.05 level) difference between the 20-mg/day and the 60-mg/day dose group for TRH-evoked TSH is less than 20 percent. As a consequence, a reliable NOEL cannot be established with these data. In addition, the Gardner studies do not have sufficient statistical power to rule out the possibility of an effect on the peripheral metabolism of thyroid hormone.

Because of the interrelationship between the results of the Paul and Gardner studies, the agency's overall findings regarding the physiological effects of administration of FD&C Red No. 3 to humans are presented after the agency's discussion of the Paul study, which is set out below.

ii. *The Paul study.* This study was designed to investigate the effect of a small increase in dietary iodine on thyroid function and to determine whether the increase in TSH observed in the Gardner studies was due to the intact dye or to iodide originating either as a contaminant of the color additive or from its deiodination. Nine men with normal thyroid functions (enthyroid subjects) between the ages of 26 and 56 years (34 ± 3 mean ± SE) and 23 euthyroid women between the ages of 23 and 44 years (32 ± 2) received 0.25 mg, 0.5 mg, or 1.5 mg of supplemental iodide for 14 days. Serum T_4, T_3, resin T_3 uptake, TSH, PBI, total iodine, and free T_4 index were measured on days 0 and 15. TRH tests were also performed on days 0 and 15. A 24-hour urine collection was obtained for measurement of iodine and creatinine content on day 7 and day 14; serum iodine analysis was done on blood taken on day 8.

No changes in thyroid metabolism were observed among subjects receiving 0.25 or 0.5 mg of sodium iodide daily. Subjects receiving 1.5 mg of sodium iodide exhibited urinary iodine excretion levels equivalent to the subjects in the Gardner study that received 200 mg of FD&C Red No. 3 daily. Further, subjects receiving 1.5 mg of sodium iodide exhibited small but significant decreases in serum T_4 and T_3 concentrations and small increases in serum basal TSH and TRH-stimulated TSH levels. All values remained within the normal range.

The proponents claim that when urinary iodine excretion is increased by dietary iodide to a level that is equivalent to that which occurred after the administration of 200 mg/day of FD&C Red No. 3, there are changes in pituitary and thyroid functions that are similar to those that occurred following the administration of FD&C Red No. 3. Therefore, the proponents contend that the effects of FD&C Red No. 3 observed in the Gardner study were due to the ingestion of iodide and were not attributable to the absorption of an organically bound iodine component of the color additive.

FDA rejects this contention. While the Gardner and Paul studies show similar urinary excretions of iodine (total iodine per gram creatinine) for 200 mg/day of FD&C Red No. 3 and 1.5 mg/day of sodium iodide, respectively, the changes in the pituitary and thyroid functions were not shown to be the same. In particular, while the effects on TSH appear to be similar, changes in thyroid hormones were not concordant. Specifically, the color additive caused a 30-percent increase in basal TSH levels and a 67-percent increase in TRH-stimulated TSH levels without change in T_3 and T_4 levels. The iodide caused no significant increase in basal TSH and a 44-percent increase in TRH-stimulated TSH levels associated with a 7.5-percent decrease in T_3 and an 11-percent decrease in T_4 levels. Thus, the agency believes that the data do not support the proponents' conclusion that the effects of FD&C Red No. 3 on pituitary and thyroid functions are explained in full by iodide present in or released from the color additive and are not caused by the color additive itself.

c. *Interpretation of human data and conclusions.* The proponents claim that these studies in humans demonstrate that FD&C Red No. 3 is poorly absorbed (<1 percent) from the gastrointestinal tract of humans and that the color additive does not produce effects on the peripheral metabolism of thyroid hormone in humans even at 200 mg/day for 2 weeks. They further contend that iodide made available by repeated 200-mg/day doses of FD&C Red No. 3 may result in an increased response to TRH stimulation by decreasing thyroid hormone release. Despite this effect, serum T_4, T_3, rT_3, and TSH concentrations, as well as the increment

in serum TSH that follows TRH administration, remained within the normal range in subjects ingesting 200 mg/day. Thus, the proponents conclude that the four studies described above, together with data demonstrating substantial differences between rat and human thyroid economy and oncogenesis, demonstrate that there is no basis for inferring a risk of thyroid oncogenicity in humans from the consumption of FD&C Red No. 3.

Because of the methodological limitations of these four human studies discussed above, the agency finds that the results do not provide conclusive evidence concerning the bioavailability of FD&C Red No. 3 or the hormonal effects of ingestion of the color additive in humans. Regarding bioavailability, the agency finds that the results suggest that (1) ingestion for a few days of 10 to 25 mg/day of FD&C Red No. 3, in an aqueous solution, may result in some (about 1 percent) absorption of the color additive into the body and a consequential elevation of the PBI concentration; (2) the fate of the absorbed FD&C Red No. 3 is unknown, but both organic and inorganic components appear to be present in the body after ingestion; (3) some radioactivity of ^{131}I labeled erythrosine was detected in experimental subjects 14 days after a one-time administration of 80 mg of the radiolabeled compound; and that (4) a sizable portion of the accumulated iodine is in the organic form. The agency also finds that the proponents have not addressed the bioavailability or hormonal effects that might result from the administration of FD&C Red No. 3 in a nonaqueous food media for an extended period of time.

Contrary to the proponents' position, the agency finds that these studies demonstrate that the administration of FD&C Red No. 3 at levels of 200 mg/day appears to have an effect on human thyroid hormonal functions, specifically on pituitary stimulation (TSH) of thyroid metabolism. Further, this effect has not been shown to be identical to the effects attributable to inorganic iodide, and the potential effects at levels of administration of FD&C Red No. 3 at less than 200 mg/day cannot be determined from the submitted data. Thus, the agency concludes that a no-effect level on thyroid hormonal function for FD&C Red No. 3 in humans has not been established. In any case, the agency concludes that in the absence of adequate data to establish the hypothesized secondary mechanism in rats, the results of these clinical studies do not alter the agency's decision as to the safety of the petitioned uses of FD&C Red No. 3.

V. Evaluation of the Secondary Mechanism

The proponents of FD&C Red No. 3 agree with the agency that FD&C Red No. 3 caused follicular cell neoplasms in the thyroid glands of male rats fed FD&C Red No. 3 at a dose level of 4 percent. However, in their May 1988 submission, the proponents contend that "there is no evidence that FD&C Red No. 3 acts through a direct (primary) mechanism to induce rat thyroid follicular cell tumors; FD&C Red No. 3 is not genotoxic and it does not accumulate in the rat thyroid after ingestion." Further, the proponents contend that there is a threshold level below which the hormone imbalance will not occur and that FD&C Red No. 3 may be safely used in products at or below that level.

FDA has reviewed all of the data and information submitted by the proponents to support its secondary mechanism hypothesis and finds that this evidence does not demonstrate that the carcinogenic effects of FD&C Red No. 3 observed in male rats are the result of the hypothesized TSH-mediated mechanism. The available evidence is inadequate for two principal reasons. First, this evidence does not demonstrate that TSH levels remain elevated for the duration of a study that results in thyroid tumors near termination. Second, this evidence does not adequately demonstrate the full sequence of morphological events that are expected to result from a prolonged elevation of TSH. FDA's evaluation of the secondary mechanism hypothesis is complicated by the short duration of the studies provided. The proponents have known since at least 1982 that FD&C Red No. 3 is an animal carcinogen. Nevertheless, all of the studies subsequently conducted by the proponents cover the effects of FD&C Red No. 3 administration only through 7 months, despite the fact that the carcinogenic response is observed near the end of a 28-month study. As discussed below, the agency finds, that, even when pieced together, the evidence from the short-term studies fails to establish the secondary mechanism hypothesis and does not rule out the possibility that the tumor induction is a direct response to exposure to FD&C Red No. 3. Furthermore, the agency finds that the proponents' data do not adequately define the no-effect dose for FD&C Red No. 3. Importantly, however, evidence of a no-effect dose is of no significance until operation of the secondary mechanism has been established. The agency's conclusions with respect to the components of the secondary mechanism hypothesis are discussed in detail below.

A. Inhibition of 5'-Monodeiodinase in the Rat Liver and Kidney

The proponents postulate, based on the experimental data they have provided, that FD&C Red No. 3 inhibits an enzyme in the liver and kidneys, 5'-monodeiodinase. As a result, their hypothesis predicts that under the influence of FD&C Red No. 3, serum T_3 levels should decrease, and serum T_4 and rT_3 levels should increase. The proponents' evidence of inhibition of 5'-monodeiodinase is provided in the publication by Ruiz and Ingbar, a portion of the Hazleton study, and the ADME study.

As set forth above, FDA has evaluated this information. Despite the shortcomings of these studies that are delineated above, the agency concludes that collectively, the results of all of the short-term studies, including the Bio/dynamics I study, provide limited evidence to support the proponents' claim that, at least initially, FD&C Red No. 3 impairs the conversion of T_4 to T_3 by blocking the action of the peripheral 5'-mondeiodinase. The proponents have clearly acknowledged that the duration of inhibition of 5'-monodeiodinase is critical to the degree to which changes in follicular cell morphology occur. Significantly, however, none of their studies provides data to establish the long-term effect of FD&C Red No. 3 on the 5'-monodeiodinase enzyme. Thus, the agency concludes that there is no evidence that this enzyme is chronically inhibited by FD&C Red No. 3.

B. Increased TSH in Response to Decreased T_3

If the proponents' hypothesis is correct, the inhibition of 5'-monodeiodinase should result in decreased T_3 levels which then result in secretion of excess TSH by the pituitary. However, based upon the agency's review of the available data, the proponents have not established through data that TSH levels are continuously elevated during chronic administration of FD&C Red No. 3. First, the 28-month IRDC studies themselves provided no evidence that the levels of TSH are elevated above normal because TSH and T_3 levels were not measured.

Second, although there is some evidence of elevated TSH levels from the remaining short-term studies, those studies were all of limited duration. In particular, in the Bio/dynamics I study, there is evidence of increased levels of

TSH for the duration of the study, which was only 60 days. In the PRI study, there is evidence of significantly elevated levels of TSH but only in one set of analyses (the "in-life" phase) of the study. Moreover, the fact that, in the PRI study, there were different results on the same set of blood samples tested at different times indicates that not all relevant experimental procedures were under adequate control; this limits confidence in the results of this study.

The results of the Hazleton study also do not establish the hormonal changes necessary to support the proponents' hypothesis. In particular, there is no evidence of sustained, statistically significant differences in the TSH levels between the treated and control animals throughout the course of the study. Although the TSH means for rats treated with FD&C Red No. 3, compared with control animals, increased to borderline statistical significance ($p=0.04$) at the 30-day time point, the overall difference in TSH means throughout the 7-month course of study was not statistically significant. The 1987 Panel reached the same conclusion about the Hazleton study results. That Panel concluded that administration of FD&C Red No. 3 caused an increase in TSH levels based on a comparison of group means values between treated and control groups, but also recognized the lack of statistical significance between the male rat groups.

Finally, the Witorsch study results do not provide acceptable evidence of increased TSH secretion. In the Witorsch study, the proponents tested whether there was an increase in the responsiveness of pituitary thyrothropic (TSH-secreting) cells to exogenous TRH. In fact, the results of this study demonstrate no such increase in pituitary responsiveness because there was no difference in the proportion of increase in TSH between animals treated with FD&C Red No. 3 and the control animals when both groups were injected with TRH.

Accordingly, the proponents have not demonstrated a key portion of the secondary mechanism hypothesis: that TSH levels are chronically higher than normal for the portion of the life of the rat necessary to produce thyroid follicular neoplasms. Moreover, the proponents have not demonstrated that FD&C Red No. 3 induces increased pituitary responsiveness.

C. TSH Induced Thyroid Stimulation to Increase Production of Thyroid Hormones

According to the proponents' hypothesis, the increased levels of TSH resulting from administration of FD&C Red No. 3 should stimulate the thyroid to produce more T_4 and T_3. Quantitatively, thyroid production of T_3 is small compared with that produced by peripheral conversion of T_4 to T_3. Thus, the thyroid would be stimulated to attempt to compensate for the continued deficit of T_3 caused by the inhibition of the 5'-monodeiodination of T_4 by FD&C Red No. 3. However, even with the increased stimulation of the thyroid by excess TSH, the continued inhibition of 5'-monodeiodination would prevent restoration of T_3 levels to normal. Thus, under these conditions, only levels of T_4 and rT_3 would increase.

The agency concludes that the results of the Hazleton and Bio/dynamics I studies support the predicted changes in T_3, T_4, and rT_3. Significantly, however, the results of the Witorsch study show an increase in T_3, rather than the predicted decrease. Moreover, there were no measurements of T_4, T_3, rT_3, or TSH at any time during the conduct of the chronic IRDC study. Thus, there are no data on the thyroid hormone changes beyond 7 months. Therefore, the proponents' data do not demonstrate that the administration of FD&C Red No. 3 results in the long-term hormonal changes predicted by their hypothesis.

D. Progression of Changes in Follicular Cell Morphology

If the proponents' hypothesis is valid, the thyroid glands of rats on test should manifest evidence of stimulation not only in terms of excess levels of TSH, T_4, and rT_3, and reduced levels of T_3, but also in terms of morphologic changes. Hypothetically, the proposed increases in TSH should increase thyroid activity. A thyroid gland undergoing increased activity should show increased size (enlargement) and increased weight. Over time, prolonged stimulation of thyroid activity is associated with increased numbers of follicular cells (hyperplasia), which may progress to a nodular proliferation of follicular cells and eventually to neoplasia. This pattern of progressive morphological change (follicular cell hypertrophy, follicular cell hyperplasia, thyroid gland hypertrophy, nodular hyperplasia, follicular cell adenoma, and, possibly, follicular cell carcinoma) is similar, irrespective of the causal agent (Refs. 3, 12, and 15). Thus, there should be a pattern of progressive change in the proliferative lesions present in the thyroid glands of animals continuously fed FD&C Red No. 3.

Based on its review, FDA has concluded that the data from the studies submitted do not establish the progressive morphologic changes that would be the expected result of thyroid gland stimulation. First, there is inconsistent evidence of cellular hypertrophy. Although the electron micrographs from the Hazleton study provide evidence of thyroid follicular cell hypertrophy, the results of the PRI study showed no such hypertrophy.

Moreover, the morphologic changes that were observed in the Bio/dynamics I study are paradoxical or, at least, inconclusive. In the Bio/dynamics I study, the thyroids of animals exposed to FD&C Red No. 3 apparently did show some early evidence of activation by TSH because follicle size and colloid area in the gland were decreased early in the study. However, the cells lining the follicles were decreased in size instead of being increased or hypertrophied. Data from the termination of this study are also paradoxical. At that point, the follicular cells had become larger than those of the control animals, as the hypothesis would predict. However, at termination, the follicle size and colloid area also had become larger. Such increased follicle size and colloid area both suggest decreased thyroid activity and thus, conflict with the proponents' hypothesis.

The proponents' data also fail to establish cellular hyperplasia in rats fed FD&C Red No. 3. In particular, the proponents' claim of hyperplasia occurring in the rats sacrificed at 1 year in the IRDC study has not been substantiated. Indeed, as late as May 1988, the proponents claimed that no hyperplasia was observed at 1 year in this study. In addition, in the context of the proponents' hypothesis, one would also expect to observe thyroid gland hypertrophy at 1 year. However, there was no other evidence to confirm this glandular hypertrophy resulting from cellular hyperplasia (such as increased thyroid weights).

Finally, CCMA developed no morphologic data for the 16-month period between the 1-year interim sacrifice and the terminal sacrifice in the IRDC study. Thus, there are no data to illustrate the progressive proliferative changes from the alleged hyperplasia at 1 year to the adenomas and carcinomas observed at the conclusion of the IRDC study.

Based upon the foregoing, the agency concludes that the proponents have not demonstrated the full sequence of morphological events that are necessary to support their contention that elevated levels of TSH mediate a series of progressive proliferative lesions of the thyroid that ultimately lead to the expression of thyroid tumors.

E. A No-Effect Level

The proponents hypothesize that if FD&C Red No. 3 operates through a secondary mechanism, a dose having no effect on thyroid economy can be established. This "no-effect" level is based on measurements of TSH levels in response to administration of FD&C Red No. 3. One objective of the Bio/dynamics I study was to establish such a dosage level. However, as discussed above in section IV, the agency concludes that the Bio/dynamics I study results do not support the proponents' claim that the 0.25-percent dose level is a "no-effect" dose in rats.

Apparently, the proponents agree with the agency's conclusion about the Bio/dynamics I study because on May 10, 1989, they submitted to the agency a protocol for another "no-effect" level study, Bio/dynamics Project No. 88-3378 (Bio/dynamics II study). On May 19, 1989, CCMA submitted a report describing preliminary results after 30 days, of the Bio/dynamics II study, and on June 19, 1989, they submitted the TSH assay for the study. On August 4, 1989, CCMA submitted a final report for the study and concluded that a dietary concentration of 0.06-percent FD&C Red No. 3 (approximately 36 mg/kg/day) is a no-effect level for male rats.

The agency is currently evaluating the portion of the results of the Bio/dynamics II study that has been submitted. However, because the agency has concluded that the proponents have not offered sufficient evidence to support the secondary mechanism hypothesis, this additional information related to a no-effect level cannot alter the agency's decision concerning the provisionally listed uses of FD&C Red No. 3.

F. Genotoxicity

In evaluating the possible mechanism underlying the carcinogenicity of FD&C Red No. 3, the agency also considered issues related to the genotoxicity of the color additive. The agency does not accept the proponents' conclusion that the available data establish that FD&C Red No. 3 is not genotoxic. In particular, as discussed above in section IV, the agency has concluded that there are still issues regarding the potential of FD&C Red No. 3 to interact with and damage genetic material. These questions are based upon results of tests of FD&C Red No. 3 in systems used to assess the interaction of the color additive with mammalian genetic material. These results include those on chromosomal aberrations and micronuclei formation in hamster cells in vitro and micronuclei formation in mouse bone marrow and gene mutation in the mouse lymphoma TK+/−assay. The results from these studies indicate that FD&C Red No. 3 has the potential to interact with cellular DNA; the evidence of such interaction prevents the agency from concluding that FD&C Red No. 3 acts solely through a secondary mechanism in the induction of thyroid tumors. Furthermore, even if FD&C Red No. 3 was established not to be genotoxic, this lack of genotoxicity would not be sufficient evidence by itself to establish the hypothetical secondary mechanism.

G. Other Evidence

1. Other Goitrogens

In two recent publications, the authors contend that there is a developing body of experimental data that supports the concept of a secondary mechanism mediating the expression of thyroid carcinogenesis by a number of substances (Refs. 3 and 12). These authors state that a diversity of experimental procedures can elicit thyroid tumors in experimental animal models. For example, physical procedures, such as development of experimental iodine deficiency, removal of a portion of the thyroid gland, transplantation of tumors secreting TSH, and exposure to certain synthetic chemicals (goitrogenic agents) result in the experimental animal being exposed to elevated levels of TSH for prolonged periods with the eventual occurrence of thyroid tumors.

For certain of these goitrogenic agents (e.g., propylthiouracil and sulfamethoxazole), there is a reasonably clear-cut correlation between the duration of exposure to the test substance and evidence of progressive proliferative changes, such as thyroid follicular cell hypertrophy, hyperplasia, and neoplasia. However, for these particular agents, there is no satisfactory series of hormonal assays that conclusively establish that TSH was indeed elevated over the period of time required for tumor development (Ref. 12).

There are other substances, e.g., 4,4'-methylenedianiline and 4,4'-methylenebis(*N,N*-dimethylbenzenamine), that, like the agents discussed above, have been determined to be thyroid carcinogens that interfere with the thyroid-pituitary axis. However, these other substances also have carcinogenic effects at other organ sites and possess significant genotoxicity (Ref. 3). The data available on these latter two substances suggest that a substance might (depending on organ site occurrences) have both a direct- and an indirect-acting carcinogenic effect.

In support of their secondary mechanism hypothesis, the proponents submitted evidence from the literature and a discussion of other agents that allegedly induce rat thyroid follicular cell adenomas through a TSH-mediated secondary mechanism. Among these goitrogenic agents, the proponents suggest that amiodarone is most similar to FD&C Red No. 3.

The agency acknowledges that there is accumulating evidence to support the hypothesis that exposure to certain synthetic chemicals, including amiodarone, may produce thyroid tumors by a secondary mechanism of hormonal disruption of the thyroid-pituitary axis. At this time, however, for any individual agent, the data needed to establish the secondary mechanism hypothesis does not exist. Even if such data were available, however, they would not prove the proponents' contention that only a secondary mechanism is operating for FD&C Red No. 3. That is, while the available information on other goitrogens lends credibility to the hypothesis that FD&C Red No. 3 acts through a secondary mechanism, such information does not constitute direct evidence to support the claim that FD&C Red No. 3 operates solely through such a mechanism.

2. Effects of Testosterone

As further support of a TSH-medicated secondary mechanism, the proponents suggested that, in the IRDC study, the male rats, but not the female rats, developed adenomas because testosterone causes an elevation of serum TSH levels in male rats. The agency acknowledges that male rats apparently do show higher levels of TSH than female rats and that this may lead to higher levels of spontaneous thyroid follicular tumors (Refs. 16 and 17). However, it is not clear to the agency how this difference in spontaneous tumor rates between untreated male and female rats influences the finding of greater tumor rates in FD&C Red No. 3-treated male rats compared with control male rats in the IRDC Study No. 410-011. The agency is not aware of any study that definitively connects the increased levels of TSH in male rats with increased rates of tumor formation. The levels of endogenously secreted testosterone would be expected to be the same in the male controls and the treated males. Thus, the agency concludes that the relevance of this argument remains to be established.

H. Summary

The proponents of FD&C Red No. 3 have submitted the results of a number of studies to support the secondary mechanism hypothesis for the thyroid carcinogenesis of FD&C Red No. 3. However, this evidence does not sustain the proponents' hypothesis. Specifically, the proponents' evidence does not establish: (1) That TSH levels remain elevated for the duration of administration of the color additive necessary to produce thyroid tumors; (2) the full sequence of expected morphological events in response to prolonged elevation of TSH levels; (3) that these changes would ultimately result in thyroid neoplasms; and (4) that FD&C Red No. 3 is not genotoxic. Indeed, the available data do not sufficiently rule out the possibility of a direct-acting mechanism. In particular, the evidence from the short-term studies is not inconsistent with an alternative hypothesis that FD&C Red No. 3 operates through a mechanism whereby the thyroid gland is initially hyperstimulated by TSH, then returns by compensation to a normal hormonal state, and, independent of these effects, is the site of primary carcinogenesis. Accordingly, although the secondary mechanism hypothesis is scientifically plausible, the agency concludes that the existing data do not support a finding that FD&C Red No. 3 acts through the hypothesized secondary mechanism to produce thyroid carcinogenesis.

Although FDA has acknowledged the scientific plausibility of the proponents' hypothesis that FD&C Red No. 3 operates through a secondary mechanism to produce a carcinogenic response, the proponents have been given adequate time to establish this hypothesis, but have failed to do so. Based upon the studies to date, FDA believes that even if the proponents were given an opportunity to conduct an additional study, there are many uncertainties that could affect the timing and outcome of such a study. Because the proponents have failed to meet their burden under the act to show that FD&C Red No. 3 is safe to a reasonable certainty, despite adequate time to do so, FDA has, as announced elsewhere in this issue of the **Federal Register**, determined that there will be no additional extension of the closing date for the provisional listings of FD&C Red No. 3 to permit additional study. Because the proponents' data are clearly insufficient, the hypothesis cannot be used to support the continued safe use of FD&C Red No. 3 in cosmetics and externally applied drugs.

VI. The Legal Standard Applicable to FD&C Red No. 3

A. The Statutory Standard of 21 U.S.C. 376(b)

Under section 706(b)(4) of the act (21 U.S.C. 376(b)(4)), the "general safety provisions" for color additives, the Secretary is prohibited from listing a color additive for a particular use unless the data presented to FDA establish that the color additive is safe for such use. The act's legislative history makes clear that safety requires proof to a reasonable certainty that no harm will result from the proposed use of an additive. FDA's color additive regulations incorporate this definition of safety. ("Safe" means that there is convincing evidence that establishes with reasonable certainty that no harm will result from the intended use of the color additive." (21 CFR 70.3(i)).)

The color additives anticancer clause (also referred to as the Delaney clause), section 706(b)(5)(B) of the act, states in part:

> A color additive (i) shall be deemed unsafe, and shall not be listed, for any use which will or may result in ingestion of all or part of such additive, if the additive is found by the Secretary to induce cancer when ingested by man or animal, or if it is found by the Secretary, after tests which are appropriate for the evaluation of the safety of additives for use in food, to induce cancer in man or animal, and (ii) shall be deemed unsafe, and shall not be listed, for any use which will not result in ingestion of any part of such additive, if, after tests which are appropriate for the evaluation of the safety of additives for such use, or after other relevant exposure of man or animal to such additive, it is found by the Secretary to induce cancer in man or animal * * *.

Thus, under the act (21 U.S.C. 376(b)(5)(B)(i)), a color additive intended for ingested uses is deemed unsafe and may not be listed if it is an animal carcinogen. Likewise, a color additive intended for noningested uses is deemed unsafe and may not be listed (21 U.S.C. 375(b)(5)(B)(ii)) if the color additive is determined to be an animal carcinogen in tests "appropriate for the evaluation of the safety of additives" for the particular use or uses under review.

B. Application of the Legal Standard

The pending petition requests the permanent listing of FD&C Red No. 3 for externally applied drug uses and for cosmetic uses. As discussed in detail above, FDA has concluded that the chronic rat feeding studies demonstrate that FD&C Red No. 3 is an animal carcinogen. In view of the finding of animal carcinogenicity, the color additive Delaney clause (21 U.S.C. 376(b)(5)(i)) requires that CTFA's petition be denied to the extent that it requests the permanent listing of the color additive for ingested cosmetic uses.

In addition, to the extent that CTFA's petition requests the permanent listing of FD&C Red No. 3 for external drug and external cosmetic uses, it must also be denied. The Delaney clause (21 U.S.C. 376(b)(5)(B)(ii)) deems unsafe and prohibits the listing of a color additive for noningested uses if the color additive is shown to be an animal carcinogen in "appropriate tests."

As set out below, after careful evaluation of the evidence, including these ingestion studies and the skin penetration study submitted by the petitioner, FDA concludes that the ingestion studies are appropriate tests (21 U.S.C. 376(b)(5)(B)(ii)) for evaluating FD&C Red No. 3 for use in externally applied drugs and cosmetics.

As discussed above in section IV D, in the skin penetration study submitted by CTFA, radiolabeled erythrosine, containing the radiolabeled 2',4',5',7'-tetraiodofluorescein as the principal component, was applied to excised pieces of human skin. The penetration of the material from the skin's surface through the layers of skin into a receptor fluid was measured by the increase in radioactivity of the receptor fluid. Small percentages of the radiolabel were measured after penetrating the skin. Thus, CTFA's skin penetration study does support the agency's position that some portion of FD&C Red No. 3 is absorbed through the skin and distributed throughout the body. In addition, the animal feeding studies establish that FD&C Red No. 3 induces cancer at a site remote from the alimentary tract; this indicates that the color additive is systemically absorbed before acting as a carcinogen.

FDA has consistently held that ingestion studies are appropriate for evaluating the safety of a color additive that is to be applied to the skin if the additive is shown to penetrate skin and be absorbed by the body (see, e.g., 43 FR 1101 at 1103, January 6, 1978; 51 FR 28331 at 28342, August 7, 1986). A color additive that penetrates the skin can be distributed to remote sites in a manner analogous to the distribution that occurs when an ingested color additive enters the circulatory system from the gastrointestinal tract. Therefore, FDA has concluded that the FD&C Red No. 3 ingestion studies are appropriate for evaluating the safety of the externally applied uses of the color additive. Because FD&C Red No. 3 has been shown to induce cancer in appropriate tests, under the color additive Delaney

clause (21 U.S.C. 376(b)(5)(B)(ii)), FD&C Red No. 3 is unsafe for use in externally applied drugs and externally applied cosmetics and cannot be listed.

For the foregoing reasons, CTFA's petition must be denied in its entirety.

C. CTFA's Legal Arguments Based on its Risk Assessments

In 1984, CTFA conducted an assessment of the risks associated with the use of FD&C Red No. 3 in cosmetics and externally applied drug products. CTFA concluded that the risk of cancer from the use of such products is well below the range of significance. Specifically, CTFA estimates that the maximum additional risk of cancer to humans from the use of FD&C Red No. 3 from external cosmetic and drug products ranges from 1 in 32 million to 1 in 17 million, depending upon the risk assessment procedures used. For lip products, CTFA calculates a risk from 1 in 2.3 million to 1 in 1.2 million. In view of the allegedly limited risks proposed by exposure to FD&C Red No. 3, CTFA argues that, for four separate reasons, the Delaney clause of the color additive amendments (21 U.S.C. 376(b)(5)(B)) should not operate to ban FD&C Red No. 3 for use in cosmetics and externally applied drugs.

CTFA's risk assessments for FD&C Red No. 3 depend upon a number of assumptions. For example, CTFA assumes that the principal component of the color additive is the carcinogenic agent and that all of the carcinogenic agent is absorbed in the animal feeding studies. FDA does not believe that the available information and data provide a basis for making this assumption, as well as other assumptions made by CTFA. However, even if CTFA's risk assessments are accepted as valid and accurate, FDA has concluded, as set forth in detail below, that under the applicable statutory standards, FD&C Red No. 3 cannot be permanently listed for use in cosmetics and externally applied drugs.

CTFA first argues that FD&C Red No. 3 is a secondary carcinogen with an extremely low level of risk associated with its use. In such circumstances, CTFA claims that the color additive Delaney clause (21 U.S.C. 376(b)(5)(B)) does not apply.

As discussed in detail above, FDA has concluded that the data presented by the proponents fail to establish that FD&C Red No. 3 mediates thyroid carcinogenesis by a secondary effect through disruption of the hormonal relationships that normally exist between the pituitary and thyroid glands. Thus, FDA has not found it necessary as part of its decision to determine whether the color additive Delaney clause would, as a legal matter, bar the listing of a carcinogenic color additive shown to operate by a secondary mechanism.

CTFA also argues that, under the principle of *de minimis non curat lex* ("the law does not concern itself with trifles"), the color additive Delaney clause (21 U.S.C. 376(b)(5)(B)) should not operate to ban FD&C Red No. 3 for use in cosmetics, including lipsticks, and externally applied drugs, because the risks associated with the petitioned uses of the color additive are so insignificant. To the contrary, the U.S. Court of Appeals for the District of Columbia Circuit has expressly held that "the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogenic dyes with trivial risks to humans." *Public Citizen* v. *Young*, 831 F.2d 1108, 1122 (D.C. Cir. 1987), *cert. denied*, 108 S. Ct. 1470 (1988).

Thus, even if CTFA's risk assessments are valid and accurate, the fact that the risks from exposure to FD&C Red No. 3, when used in externally applied drugs and cosmetics, are insignificant or trivial does not exempt the color additive from the operation of the Delaney clause (21 U.S.C. 376(b)(5)(B)) under the principle of *de minimis*.

Third, CTFA argues that under section 306 of the act (21 U.S.C. 336), FDA is not required to take action to ban FD&C Red No. 3. The agency concludes that section 306 is inapplicable here for two reasons. First, section 306 grants FDA the discretion to determine whether a matter should be referred to the Department of Justice for the institution of a civil or criminal enforcement action. (Section 306 states that FDA is not required to report for "prosecution, or for the institution of libel or injunction proceedings, minor violations of this Act * * *.") At issue here is whether, under the act, FD&C Red No. 3 may be permanently listed for certain uses, not whether the agency has the discretion to decide whether to refer an enforcement action concerning the color additive. Second, the prosecutorial discretion granted FDA by section 306 cannot be used to modify the express statutory standard of 21 U.S.C. 376(b)(5)(B). Indeed, to do so would be contrary to the decision in *Public Citizen* v. *Young*, supra. As discussed above, the D.C. Circuit held that the color additive Delaney clause establishes an "extraordinarily rigid" standard for FDA: if a color additive induces cancer, then it cannot be permanently listed. 831 F.2d at 1112, 1122.

Finally, CTFA argues that the results of the FD&C Red No. 3 animal feeding studies should not trigger the operation of the Delaney clause here because such studies are not "appropriate" tests (21 U.S.C. 376(b)(5)(B)(ii)) to assess the safety of externally applied color additives. In so arguing, the petitioner relies heavily on the agency's decision on the color additive lead acetate (45 FR 72112, October 31, 1980; 46 FR 15500, March 6, 1981).

In particular, CTFA argues that under the portion of the Delaney clause that is applicable to external uses of color additives (section 706(b)(5)(B)(ii) of the act), an animal ingestion study demonstrating carcinogenicity is not an absolute bar to the approval of a color additive for noningested use. The petitioner asserts that, to find a substance to be a carcinogen under this portion of the Delaney clause, the test that shows carcinogenicity must be "appropriate" for the evaluation of the safety of the additive or must involve some other exposure that is "relevant" to the use of the substance. CTFA argues that in the decision to list lead acetate, FDA concluded that feeding studies showing lead acetate to be carcinogenic were not relevant or appropriate under the Delaney clause because a risk assessment demonstrated that use of lead acetate presented an insignificant risk. The petitioner claims that the same is true of FD&C Red No. 3.

FDA has considered this argument and has concluded that it must fail for two reasons. First, as discussed above, the animal feeding studies of FD&C Red No. 3 are appropriate tests for evaluating the safety of the external uses of the color additive.

Second, the petitioner misinterprets FDA's decision concerning lead acetate. In deciding to list permanently lead acetate, FDA concluded that ingestion studies showing lead to be carcinogenic in animals were not appropriate for the evaluation of the safety of lead acetate for external uses. This conclusion was "based upon the unusual combination of scientific facts peculiar to lead acetate in hair dyes, a combination which will rarely, if ever, be presented again in this context" (45 FR 72112 at 72115; October 31, 1980). One of the principal factors that influenced FDA's conclusion that the Delaney clause did not apply to lead acetate was the fact that a background level of lead is always present in the human bloodstream, a background level much greater than the possible increase in lead burden resulting from use of lead acetate in hair dyes. In contrast, there is no background level of FD&C Red No. 3 in humans. Thus, the agency's decision regarding lead acetate does not require FDA to grant CTFA's petition for

cosmetic and externally applied drug uses.

For these reasons, FDA has concluded that, because FD&C Red No. 3 has been shown to be an animal carcinogen in appropriate tests, FD&C Red No. 3 cannot be listed permanently for use in externally applied drugs and cosmetics.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. McConnell, E. E. et al., "Guidelines for Combining Neoplasms for Evaluation of Rodent Carcinogenesis Studies," *Journal of the National Cancer Institute*, 76:283–289, 1986.

2. Cristov, K., and Raichev, R., "Experimental Thyroid Carcinogenesis," *Current Topics in Pathology*, 56:79–114, 1972.

3. Hill, R. N. et al., "Thyroid Follicular Cell Carcinogenesis," *Fundamental and Applied Toxicology*, 12:629–697, 1989.

4. Margolin, B. H. et al., "Statistical Analyses for In Vitro Cytogenetic Assays Using Chinese Hamster Ovary Cells," *Environmental Mutagenesis*, 8:183–204, 1986.

5. Clive, D. et al., "Guide for Performing the Mouse Lymphoma Assay for Mammalian Cell Mutagenicity," *Mutation Research*, 189:143–156, 1987.

6. Fung, V. A. et al., "Mutagenic Activity of Some Coffee Flavor Ingredients," *Mutation Research*, 204–219–228, 1988.

7. Rogers-Back, A. M. et al., "Genotoxicity of 6 Oxime Compounds in the Salmonella/mammalian-microsome Assay and Mouse Lymphoma TK+/-Assay," *Mutation Research*, 204:149–162, 1988.

8. Brookes, P., and de Serres, F. J., "Overview of Assay System Performance," in Vol. 1 of *Progress in Mutation Research: Evaluation of Short-Term Tests for Carcinogens*, Elsevier/North-Holland, NY, 98–111, 1981.

9. Federal Register of March 14, 1985 (50 FR 10371–10442).

10. Genuth, S. M., "The Thyroid Gland," *Physiology*, Berne, R. M., and Levy, M. N., ed., C. V. Mosby Co., St. Louis, MO, 1013–1032, 1983.

11. Larsen, P. R., "The Thyroid," in *Cecil's Textbook of Medicine*, Wyngarden, J. B., and Smith L. H., Jr., ed., W. B. Saunders Co., Philadelphia, PA, 1315–1340, 1988.

12. Paynter, O. E. et al., "Goitrogens and Thyroid Follicular Cell Neoplasia: Evidence for a Threshold Process," *Regulatory Toxicology and Pharmacology*, 8:102–119, 1988.

13. Mendenhall, W. et al., *Mathematical Statistics with Applications*, Duxbury Press, Boston, MA, 403–404, 1981.

14. Bailar, J. C., and Mosteller, F., ed., *Medical Uses of Statistics*, NEJM Books, Waltham, MA, 163–165, 1986.

15. Zbinden, G., "Assessment of Hyperplastic and Neoplastic Lesions of the Thyroid Gland," *Trends Pharmacological Sciences*, 8:511–514, 1987.

16. Farbota, L. et al., "Sex Hormone Modulation of Serum TSH Levels," *Surgery*, 102:1081–1087, 1987.

17. Christianson, D. et al., "The Sex-related Difference in Serum Thyrotropin Concentration is Androgen Mediated," *Endocrinology*, 108:529–535, 1981.

VIII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Regulatory and Economic Impact

Although this action is exempt from Executive Order 12291 and the Regulatory Flexibility Act, the agency has analyzed the economic effects of this action and has determined it is not a major rule as defined by Executive Order 12291. Further, FDA, in accordance with the Regulatory Flexibility Act, has considered the effect of this action on small entities including small businesses and has determined that no significant adverse affect will derive from this action. A copy of the agency's economic assessment is on file with the Dockets Management Branch.

X. Conclusion

Under section 706 of the act, a petitioner seeking approval for permanent listing of a color additive has the burden of proof to demonstrate by adequate tests that the color additive is safe. Therefore, FDA is precluded from permanently listing a color additive when the petitioner has not established "with reasonable certainty that no harm will result from the intended use of the color additive." In addition, the act (21 U.S.C. 376 (b)(5)(B)) prohibits the permanent listing of a color additive when such color additive has been shown by appropriate tests to be an animal carcinogen.

After a full evaluation of the data submitted in support of the petition and of the other pertinent data that relate to the use of FD&C Red No. 3, FDA finds:

1. FD&C Red No. 3 is an animal carcinogen when administered in the diet.

2. The studies showing FD&C Red No. 3 to be a carcinogen when ingested are relevant and appropriate to the evaluation of the safety of this color additive for noningested uses.

3. The proponents have failed to established their hypothesis that the observed carcinogenic effect of FD&C Red No. 3 is a result of a hormonally induced secondary mechanism.

Therefore, FDA concludes that the available data on FD&C Red No. 3 do not establish that its use in coloring cosmetics and externally applied drugs is safe within the meaning of section 706 of the act. Based on this finding, FDA is now denying CAP 9C0096 and is denying the permanent listing of FD&C Red No. 3 for use in cosmetics and externally applied drugs.

XI. Objections

The toxicity study reports, the agency's evaluations of these studies, and all other information relied upon by the agency in reaching its decisions are on file in Docket No. 76C–0044 at the Dockets Management Branch and may be reviewed between 9 a.m. and 4 p.m., Monday through Friday. To facilitate the use of the administrative record of this petition, the agency has prepared an index of the data and other information relied upon by the agency in this proceeding; this index is also on file in Docket No. 76C–0044.

Any person who will be adversely affected by the foregoing order may at any time on or before March 5, 1990, submit to the Dockets Management Branch (address above) written objections thereto. Objections shall show how the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with requirements of § 71.30 (21 CFR 71.30). If a hearing is requested, the objections shall state the issue for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the order may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 706

of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376), and the transitional provisions of the Color Additive Amendments of 1960 (74 Stat. 404–407 (21 U.S.C. 376, note)), and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Dated: January 26, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–2264 Filed 1–29–90; 11:20 am]

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Federal Register

Thursday
February 1, 1990

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 391

Controlled Substances Testing; Interim Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC-116]

RIN 2125-AC50

Controlled Substances Testing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; interpretations; disposition of petitions for reconsideration and waivers; request for comments.

SUMMARY: On November 21, 1988, the FHWA issued a final rule requiring motor carriers to have an anti-drug program. This program includes testing of interstate drivers of certain commercial motor vehicles (CMV) for drug use. The final rule sets forth the classes of controlled substances, the types of tests to be conducted and, through reference to 49 CFR Part 40, Procedures for Transportation and Workplace Drug Testing Programs, procedures for testing and reporting of the test results.

This interim final rule amends the requirements for pre-employment/pre-use and post-accident testing. It also sets forth interpretations and makes editorial changes and technical amendments to the final rule. These amendments are intended to make the comprehensive anti-drug provisions easier to implement, clearer to understand and more effective. In addition, this notice disposes of petitions for reconsideration and requests for waivers and exemptions the FHWA has received. Finally, the FHWA requests comments on several issues relating to drug testing.

DATES: The amendments made by this interim final rule are effective on February 1, 1990. Comments on these changes are due May 2, 1990.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-116, Room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with the word processing programs Word Perfect WordStar or the Macintosh version of Word. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas P. Kozlowski, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Thomas P. Holian, Office of Chief Counsel, (202) 366-1350, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The FHWA published in the **Federal Register** a final rule on November 21, 1988, setting forth regulations to require motor carriers who operate commercial motor vehicles in interstate commerce to have an anti-drug program, including testing of commercial motor vehicle drivers for the use of controlled substances (53 FR 47134). Testing under these rules must be conducted prior to employment/use, periodically, upon reasonable cause, after a reportable accident, and randomly. Generally, interstate drivers of commercial motor vehicles with gross vehicle weight ratings (GVWR) over 26,000 pounds, vehicles transporting hazardous materials which are required to be placarded, or vehicles designed to transport more than 15 passengers, including the driver, are covered by this rule.

On the same date, November 21, 1988, the Office of the Secretary, U.S. Department of Transportation (OST), published an interim final rule, "Procedures for Transportation Workplace Drug Testing Programs" (53 FR 47002). On December 1, 1989, OST published a final rule amending certain portions of the November 21, 1988, interim final rule. This rule, as amended by the December 1, 1989, final rule is being referred to in this document as the "OST rule."

On November 6, 1989, the FHWA published a final rule clarifying the types of testing that must be implemented by December 21, 1989 (54 FR 46616). This **Federal Register** notice also deferred implementation of the random and mandatory post-accident requirements until the preliminary injunction in *OOIDA* v. *Burnley*, 705 F. Supp. 481 (N.D. Ca. 1989), is resolved.

Since publication of its controlled substances testing regulation, the FHWA has received numerous requests for interpretations of the FHWA final rule. Some of these requests raised issues that are covered in the OST rule, and these requests were forwarded to the Office of the Secretary, U.S. Department of Transportation, for its consideration. Issues relating directly to the FHWA's final rule are discussed in this document.

The FHWA believes that many of the requests for interpretations and clarifications it has received are of general interest. Therefore, FHWA's responses to these requests are published today under the section entitled "Interpretations."

Additionally, in response to certain comments, the FHWA is amending certain provisions of the drug testing requirements published on November 21, 1988. These amendments will make it easier to understand and to effectively implement the drug testing requirements. The amendments are discussed in detail under the section entitled "Amendments."

Petitions for Reconsideration and Requests for Waivers and Exemptions

Subsequent to the publication of its final rule, the FHWA received additional written comments, two petitions for reconsideration of the rule, a request for clarification, one petition for an amendment to the final rule, and two petitions for waivers/exemptions.

The National Tank Truck Carriers, Inc. (NTTC), filed a petition for adminsitrative review and reconsideration addressing the following areas: limitation of testing to interstate carriers and drivers, post-fatal accident testing, and medical review officer requirements.

The NTTC contends that the final rule places interstate motor carriers in an unfair economic position relative to intrastate motor carriers because the requirements of the rule only apply to interstate drivers. The FHWA noted in the final rule, and here reiterates, that it will consider in a separate rulemaking whether to extend the drug testing requirements to intrastate drivers.

The NTTC also contends that the provisions contained in the final rule regarding post-accident testing were an unwarranted expansion of the June 1988 proposal and a violation of the Administrative Procedure Act. The FHWA disagrees that the post-accident testing requirement of the final rule impermissibly exceeded the scope of the NPRM published by the FHWA. However, the agency has reconsidered this requirement and, for reasons set forth below, has decided to amend it to require that a driver be tested for use of controlled substances after a reportable accident in which the driver of the commercial motor vehicle was issued a citation for a moving traffic violation by

a law enforcement officer. This amendment is further discussed under the section entitled "Amendments."

Finally, the NTTC also took issue with the requirement that a medical review officer (MRO) be used to review laboratory test results and to discuss positive test results with the person who was tested. The NTTC believes that this requirement is unnecessary, redundant, and will prompt needless expense by the carriers. The FHWA disagrees. As noted in the final rule, the MRO will be a key individual in ensuring that the drug testing program is functioning properly and fairly. The primary role of the MRO is to afford tested persons an opportunity to explain positive test results, including the possibility that such positive test results are attributable to the proper use of prescribed medication. The FHWA notes that the MRO is to be responsible for the integrity of the test results and recordkeeping and, if deemed appropriate by the MRO, these functions may be carried out by other individuals who are under the supervision and control of the MRO. The functions of the MRO are discussed further in the OST final rule on drug testing procedures published on December 1, 1989. 54 FR 49854.

Gray Line of Alaska requested an exemption from the medical review officer related requirements of the rule. The FHWA believes that an MRO is crucial to a good drug testing program. The FHWA's program is intended to deter and detect prohibited use of certain types of drugs, in the interest of transportation safety. Many substances (e.g., opiates, cocaine) have legitimate medical uses as well as prohibited uses. Laboratory machines, however accurate, cannot make this distinction; they just measure quantities of a chemical in urine. A trained, medically knowledgeable person, the MRO is essential to distinguish legal from prohibited use of substances. In the absence of such informed medical judgment, we believe that the system would be less likely to achieve its safety objective in a fair manner. Like a sound chain of custody, GC/MS confirmed tests, and DHHS-certified labs, an MRO is a safeguard that will ensure that the FHWA required drug tests will be fair to those tested.

The Kansas Gas and Electric Company also requested a waiver from all the procedural requirements of the final rule. Both Gray Line of Alaska and KG&E Co. contend that they have existing drug use policies and testing procedures, and believe that their procedures should be used in lieu of the requirements of the final rule. Both requests are being denied because the FHWA believes that the testing procedures mandated by the final rule and the OST rule provide a careful balance between public safety and individual rights. While the final rule provides motor carriers with much flexibility in designing their drug testing programs, the FHWA is interested in suggestions on how this flexibility may be increased.

The FHWA recognizes that many motor carriers were testing for controlled substances prior to the issuance of this final rule. Many of these motor carriers commented on the FHWA's proposed rule published on June 14, 1988 (53 FR 22268), and participated in the public hearings the FHWA held on the proposed rule. These comments were instrumental in the development of the final rule as well as certain elements of the OST rule. The FHWA believes that the procedures contained in both the FHWA final rule and the OST rule accommodate many of the concerns raised by these carriers. Moreover, we further believe that these rules should apply equally to those who conducted drug testing before the adoption of these rules, as well as those for whom drug testing is new. We believe that uniform application of these rules will ensure fairness to all those required to be tested, facilitate the achievement of the FHWA's safety objective, and enhance the FHWA's ability to enforce the primary requirements of the program.

The National Private Truck Council (NPTC) requested a clarification of the term "supervisor" as it is used in § 391.99 regarding reasonable cause testing. The FHWA agrees with the suggestion made by the NPTC and therefore has amended paragraphs 391.99 (b) and (c) to make it clear that company officials, in addition to supervisors, may also witness and document an action that results in a required test for controlled substances under the reasonable cause provisions, provided such persons have had the training required of supervisors. See the section entitled "Amendments" for a further discussion of this issue.

United Van Lines, Inc. (UVL), submitted additional comments and a petition for reconsideration and clarification regarding several areas of the final rule. These areas include: Implementation schedule, substances for which drivers are to be tested, recordkeeping and reporting, disqualification for drivers testing positive, reasonable cause testing, post-accident testing requirement, random testing, and consortiums. These issues are addressed below.

Finally, the American Trucking Associations (ATA) petitioned the FHWA for an amendment to the final rule to allow motor carriers to employ a driver without requiring the driver to submit to a pre-employment test if certain conditions are met. The FHWA believes this petition has merit and therefore is amending the final rule. See section entitled "Amendments."

Interpretations

The interpretations presented here are in a question/response format. Those responses which require revisions to the final rule are so reflected in amendments to the rule. These revisions are further discussed under the section entitled "Amendments."

Question 1: What is the difference between the "effective date" of the final rule and the "date drug testing requirements must be in place"?

Response: The FHWA's controlled substances testing final rule became effective on December 21, 1988. As of that date, the rule became part of the Federal Motor Carrier Safety Regulations. Persons subject to those regulations were placed on notice as to their responsibility to comply with the requirements of the rule. However, the primary requirement of this particular rule, drug testing of drivers, is to be phased-in in accordance with the implementation schedule set forth in this rule. The time between the effective date and the date drug testing was to begin is intended to provide motor carriers and drivers time to establish workable and effective drug tesing programs.

Question 2: When are motor carriers required to implement drug testing?

Response: Motor carriers are required to implement the drug testing requirements by either December 21, 1989, or December 21, 1990, depending on the number of "drivers subject to testing" being used by a motor carrier on December 21, 1989. "Drivers subject to testing" is defined as employee drivers or contract drivers under contract for 90 days or more in any period of 365 days. Motor carriers with 50 or more "drivers subject to testing" must implement the drug testing requirements by December 21, 1989. Other motor carriers have until December 21, 1990. This provision was further clarified in the FHWA's final rule published on November 6, 1989 (54 FR 46616).

Question 3: Which drivers are to be counted for purposes of determining when drug testing is to be implemented?

Response: Motor carriers are to determine the number of "drivers subject to testing" used or employed on December 21, 1989. There are three criteria that a driver must meet in order to be counted: Use status, operation of the vehicle, and type of vehicle driven. (1) Use status—the driver must be either an employee of the motor carrier or a CMV driver who has been, or will be as a result of the current contract, under contract with the motor carrier for a total of 90 days or more. The 90 days need not be consecutive, but must be 90 days within a 365-day period. (2) Operation of the vehicle—the driver must operate the commercial motor vehicle in interstate commerce, i.e., the driver operates the vehicle across a State line or, in some cases, a single-State movement which is the continuation of a through interstate movement. (3) Type of vehicle—the vehicle must be a commercial motor vehicle with a gross vehicle, weight rating or combination weight rating of 26,001 or more pounds; designed to transport more than 15 passengers, including the driver; or used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued by the Secretary under the Hazardous Materials Transportation Act (49 U.S.C. App. secs. 1801–1813). Drivers who do not meet these criteria are not required to be counted by the motor carrier for purposes of determining when the motor carrier is required to implement drug testing. During the period December 21, 1989, through December 20, 1990, large motor carriers are required to test only those current and new drivers who meet the definition of "drivers subject to testing." See **Federal Register** 54 FR 46616 (November 6, 1989).

The implementation schedule for consortiums and other third party testing arrangements is dependent on the size of each motor carrier in the consortium, not the size of the consortium. As with motor carrier based programs, only the "drivers subject to testing" need to be tested during the period December 21, 1989 through December 20, 1990.

Question 4: What does "under contract" mean?

Response: For the purposes of this rule, "under contract" means any contractual relationship, either direct or indirect, between the driver and the motor carrier, including third-party contracts. Agreements between driver leasing companies (or other entities that perform driver leasing functions) and motor carriers are included, regardless of whether specific drivers are individually specified or identified in the agreement. For example, XYZ Driver Leasing Company contracts with ABC Trucking Company to provide 10 drivers for a 180-day period without identifying the specific individuals. The 10 driver positions are to be counted for the purposes of determining if ABC Trucking Company is required to initiate drug testing on December 21, 1989, and if so determined, all the drivers that meet the definition of "drivers subject to testing" obtained from XYZ Driver Leasing Company are required to be included in a drug testing program during the period December 21, 1989, through December 20, 1990. Starting on December 21, 1990, all commercial motor vehicle drivers for ABC Trucking, including those under contract for less than 90 days, are to be included in a drug testing program.

Question 5: When are owner-operators and drivers hired out of hiring halls subject to the drug testing requirements?

Response: Such drivers are subject to the same requirements as any other driver. They would be subject to drug testing based on (1) the implementation of a drug testing program by the motor carrier they are used by and (2) the number of days they are used by the motor carrier. A driver, who meets the above requirements and who is hired out of a hiring hall or through other means, is subject to all testing requirements by the motor carrier.

For an owner-operator, that is, an individual who operates as a motor carrier, testing is not required until December 21, 1990, since, as the term "owner-operator" is commonly understood, the motor carrier has less than 50 CMV drivers.

Question 6: What is the difference between "medically unqualified" and "disqualification" as referred to in the controlled substances testing rule?

Response: The final rule generally addresses driver medical qualification requirements. "Drug use" as used in this rule and in other parts of the FMCSRs is a condition that makes a person medically unqualified to drive a commercial motor vehicle in interstate commerce. A person may not drive in interstate commerce, and a motor carrier shall not require or permit a person to drive in interstate commerce, if that person is not medically qualified to drive (see 49 CFR 391.41(a)). The use of controlled substances as defined in the FMCSR makes the driver medically unqualified to drive (regardless of whether or not the driver was tested). A driver who uses controlled substances is medically unqualified until such time as he or she no longer uses such drugs and tests negative for such use.

"Disqualification," on the other hand, means that a driver may not drive for a fixed period of time, regardless of whether or not he or she is medically or otherwise qualified to do so. The final rule provides for disqualification of a driver for one year if the driver refuses to give a urine sample when that driver has been involved in a fatal accident or if the driver tests positive for the use of one of the five classes of drugs after a fatal accident. This disqualification action is taken by the Federal Highway Administration by issuance of a letter of disqualification to the driver.

Other parts of the FMCSR provide for disqualification of drivers who are convicted of (or forfeit bond or collateral upon a charge of), among other things, unlawful use, transportation, possession or being under the influence of controlled substances (see 49 CFR 383.51 and 391.15). Under these regulations, a driver is disqualified upon the occurrence of the event described in the rule (i.e., conviction), and such a driver may not be used by a motor carrier until the completion of the disqualification period. Note that the term "controlled substance" as used in these sections refers to schedules I through V in 21 CFR 1308.11 through 1308.15, Schedules of Controlled Substances.

Question 7: What is the responsibility of the MRO in notifying the driver before releasing the results of a positive test to a motor carrier?

Response: The OST rule provides that the MRO give the individual with a positive test result the opportunity to discuss the test result with the MRO prior to making a decision regarding a positive result (see 49 CFR 40.33(c)). Paragraph 391.97(a) of the FHWA final rule states that an "MRO may provide an opportunity for a driver to discuss a positive test result and clarify if a prescribed medication was involved." The FHWA is making a technical amendment to this section to clarify this requirement and to make it consistent with the OST rule. See section entitled "Amendments".

The FHWA encourages motor carriers to establish procedures to ensure that there is an opportunity for the discussion of positive test results before the results are reported to the motor carrier. These procedures may include providing to the MRO information regarding the drivers' location during the time test results would be received from the laboratory, a method for drivers to

contact the MRO, and/or a requirement that drivers provide any information that may explain a positive test result (e.g., therapeutic drug use).

Question 8: Who is the supervisor of independent or contract drivers for purposes of reasonable cause testing?

Response: The person who would be initiating the reasonable cause testing action is intended to be a person who is authorized to act on behalf of the motor carrier. The FHWA inadvertently left out the term, "or company officials," in the regulatory language. The intent to include additional company officials who may authorize reasonable cause testing was reflected in the preamble to the November 21, 1988, final rule under the section entitled "Reasonable Cause Testing" on page 47140 of the **Federal Register**. For a more complete discussion of this, please refer to the section entitled "Amendments."

Question 9: How should a motor carrier compute the number of random tests to be given to ensure that the 50% testing rate is achieved given the fluctuations in driver populations and in the high turnover rate of drivers?

Response: The FHWA realizes that there are fluctuations in a motor carrier's drive work force which will make an accurate computation of a 50% testing rate difficult. A motor carrier's random testing program plan should take into account these fluctuations by estimating the number of random tests needed to be performed over the course of the year. If the motor carrier's driver work force is expected to be relatively constant (i.e., the total number of driver positions are approximately the same or is changing at a relatively constant rate), then the number of tests to be performed in any given year could be determined by multiplying the average number of driver positions by the testing rate.

However, if there are large fluctuations in the number of driver positions throughout the year without any clear indication of the average number of driver positions, the motor carrier should make a reasonable estimate of the number of positions. After making the estimate the motor carrier should then be able to determine the number of tests necessary. The total random tests taken for the year, however, must equal 50% of the driver positions. For example: If a motor carrier decided to perform random testing four times a year, the number of tests to be performed during each of the testing periods (T) should equal 50% of the number of driver positions eligible to be tested (D) divided by the number of test periods per year (P). As a formula this may be expressed as: $T=50\%\times D/P$

At the time of selecting the individuals to be tested, the motor carrier determined that there were an average of 60 drivers eligible for testing during the period covered by the February test, 80 drivers in May, 100 drivers in August and 70 drivers in November. Using the formula given above, the motor carrier would have to perform 8 tests in February (50% time 60/4 equals 7.5 tests and rounding up to the nearest whole number), 10 tests in May, 13 tests in August and 9 tests in November for a total of 40 tests.

However, throughout the year the carrier needed to perform 39 tests in order to assure testing at the 50% rate. This figure was computed using the same formula with D equal to the summation of the number of drivers eligible for testing in each of the testing periods ($D=60+80+100+70=310$ drivers), and by completing the formula, $T=50\%$ times $310/4=38.75$) and rounding up to the next nearest whole number, 39. In this example the motor carrier could perform one less test in the last testing period.

Since driver population may vary during any given period in a year, a motor carrier who only conducted random testing during low driver periods would not be able to meet the 50% random testing ratio.

The motor carrier's random testing plan should be documented and kept confidential. The FHWA emphasizes that each selection for random testing must include all drivers to whom the final rule applies, regardless of whether or not they have been tested before. It is quite likely with a large driver turnover rate that a motor carrier, over the course of the year, will be employing/using more drivers than there are driver positions. In determining the number of tests, a motor carrier should use the number of driver positions, not the number of drivers employed/used during the testing period.

To illustrate using the previous example, in the February tests (which represent the quarter January 1 through March 31) the motor carrier determined that there was an average of 60 driver positions. However, during the same quarter (at least up to the date the motor carrier performed the random selection of drivers to be tested, say February 12) the motor carrier employed/used a total of 75 individuals as drivers. Of these 75 individuals, 15 were no longer used by the motor carrier at the time the selection was made (February 12). As noted earlier, eight will be selected for testing.

Question 10: When may a motor carrier discontinue periodic testing for controlled substances?

Response: In order for a motor carrier to discontinue periodic testing under the final rule, two conditions must be met: (1) The motor carrier is randomly testing, in accordance with the requirements of subpart H, at the 50 percent rate; and (2) all the CMV drivers eligible to be tested under the motor carrier's drug testing program must have been tested at least once under the biennial (periodic), pre-employment or random testing requirements. The FHWA is amending § 391.105(c) to permit a drug test performed under either the random testing requirements or pre-employment to substitute for the periodic test only to determine when a motor carrier may discontinue periodic testing. For more information on this amendment, see the section entitled "Amendments."

Question 11: Are drivers who drive only in intrastate commerce required to be tested under this rule?

Response: No. Only drivers who operate in interstate commerce and meet the other eligibility requirements are required to be tested. As stated in the preamble to the final rule under the section entitled, "Effect on the Motor Carrier Safety Assistance Program," the FHWA will investigate the inclusion of such intrastate drivers in a separate rulemaking. The FHWA emphasizes that Federal funding to States under the Motor Carrier Safety Assistance Program (MCSAP) for roadside vehicle inspections, and other purposes in not affected by the final rule.

Amendments

The FHWA is amending the final rule, Controlled Substances Testing, published on November 21, 1988 (53 FR 47134). These amendments are intended to make the comprehensive anti-drug provisions easier to implement, clearer to understand and more effective. Amendments are generally being made in four primary areas: pre-employment/pre-use, post accident testing, and role of the medical review officer, and the medical examiner's certificate/medical qualifications.

Pre-Employment/Pre-Use Testing

The FHWA is amending the requirements for pre-employment testing to extent the exemption currently provided to motor carriers who are using (but not employing) a CMV driver to drivers that the motor carrier intends to employ. The amendment will allow a motor carrier to employ a driver without having first performed a pre-

employment test, provided certain conditions are met. This amendment is being made in response to a petition from the American Trucking Associations (ATA).

The ATA specifically asked that a driver-applicant not be required to pass a pre-employment test if the driver-applicant has passed a drug test under the requirements of 49 CFR part 391, subpart H, within the last six months or has been subject to random testing under these rules during the previous twelve months.

The FHWA recognizes that the final rule may be read to require each motor carrier, before using or employing a driver, to test a driver for the use of drugs (except for the limited exceptions noted), regardless of whether the driver has already been examined, drug tested, and certified as qualified to drive. The FHWA did not intend such an interpretation of the final rule and does not believe that this is necessary if the driver is question has been continuously subject to testing, has not had an appreciable break in service, and the motor carrier verifies that the driver has participated in a drug testing program. It is the FHWA's belief that a driver should not be subject to pre-employment or pre-use testing, provided the driver has been either (1) tested within the previous 6 months and continuously subject to a drug testing program which conforms to subpart H and part 40 thereafter, or (2), if not previously tested, continuously subject to a drug testing program which conforms to subpart H and part 40 for 12 months.

Accordingly, the FHWA is revising paragraph (d)(2) in § 391.103 to allow a motor carrier to use a driver without actually performing a pre-employment (pre-use) drug test provided the motor carrier verifies, by contacting the controlled substances testing program in which the driver is or was enrolled in, that the driver was tested in the previous 6 months, or has participated in a drug testing program for the previous 12 months and the driver has not been uncovered by an FHWA-required drug testing program for more than 30 days. Certain information must be obtained by the motor carrier from the program prior to using the driver, and this information must be retained in the driver qualification file.

The information which a motor carrier must obtain from the drug testing program is now included in a new paragraph (d)(3) of § 391.103. Information on the results of any drug test of the driver while covered by the controlled substances testing program of another has been added. This additional item will ensure that only those drivers who have been tested under a controlled substances testing program which complies with the requirements of subpart H are eligible for the exceptions permitted under § 391.103(d).

The list of items which the motor carrier must obtain now also applies to the exception provided in § 391.103(d)(1) regarding the use of drivers employed by another motor carrier. This amendment corrects the final rule which did not explicity require the motor carrier to verify if a driver was a member of any controlled substances testing program.

A motor carrier who exercises the exemption under § 391.103(d)(2) for a driver it uses, but does not employ, must obtain the information listed in § 391.103(d)(3) every six months for as long as it uses the driver. Motor carriers employing a driver must only obtain this information once, at the time of employment. The information must be obtained by contacting the controlled substances testing program; the motor carrier cannot obtain this information solely from the driver.

The FHWA notes that the requirements of this section specifically address drug testing as a requirement for a driver for the first time. It is not intended to apply to other types of drug testing (periodic, reasonable cause, random, and post accident) as required by the rule.

Motor carriers intending to use a driver with a valid medical examiner's certificate which indicates that the person passed a drug test, must obtain the information delineated in § 391.103(d)(3) prior to using the driver.

Post-Accident Testing

Accidents Requiring Testing

The final rule requires that drug testing be conducted after every reportable accident, but in no case later than 32 hours after the accident. A reportable accident is defined in § 394.3 as "an occurrence involving a commercial motor vehicle engaged in interstate, foreign or intrastate operations of a motor carrier who is subject to the Department of Transportation Act resulting in (1) the death of a human being; (2) bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (3) total damage to all property aggregating to $4400, based on actual costs or reliable estimates."

The FHWA is limiting which accidents must be followed by a drug test to those in which there is an indication that the commercial motor vehicle driver may have been partially at fault in the accident based on evidence that the driver of the commercial motor vehicle was issued a citation for a moving traffic violation. Notwithstanding the amendment made by this document, implementation of mandatory post-accident testing remains deferred in accordance with the terms of our November 6, 1989, **Federal Register** notice.

Responsibility for Post-Accident Testing

The FHWA proposed in its NPRM that the motor carrier ensure that drivers be tested for controlled substance use if the driver is involved in a fatal accident. Subsequently, the final rule stated, in section 391.113, that it was the driver's responsibility to provide a sample for testing following an accident. The intent of the language adopted was to indicate that the driver was expected to take affirmative steps to ensure compliance. It was not intended to relieve the motor carrier of its responsibility to ensure that the driver, as its agent, took steps to comply with the regulations.

As with most of the other requirements of the FMCSRs, and especially the requirements of part 391, Qualification of Drivers, the contolled substances testing requirements included in the final rule are, by their very nature, a joint responsibility of both the driver and the motor carrier. Therefore, the FHWA is amended the final rule to clarify this joint responsibility. While the driver is the subject of the testing requirement and, therefore, in the best position to take the required action, within the person's capabilities, it is the motor carrier's responsibility to direct drivers to submit to such testing and to provide drivers with the necessary information and procedures to follow if an accident occurs, prior to having an accident, so that the drivers will be able to take the proper action.

Section 391.113, Post-accident testing requirements, is being amended to contain such provisions. A new paragraph (c) is being added to state that the motor carrier shall provide drivers with information and procedures to be followed in the case of an accident in which the driver is required to be tested for the use of controlled substances under the final rule. The FHWA believes this amendment is consistent with procedures the motor carriers will be establishing for random testing (in the cases where the driver will not be at a specific location when the driver is selected for random testing). Furthermore, many motor carriers already have established procedures for drivers to follow in the

case of an accident (e.g., reporting accidents to the carrier, contacting repair facilities, contacting shippers or receivers, etc.).

Section 391.115, Post-accident testing procedures, is also being amended to include a paragraph requiring the motor carrier to ensure that the post-accident testing procedures conform to "Procedures for Transportation Workplace Drug Testing Programs," 49 CFR part 40, as well as subpart H.

It continues to be the motor carrier's responsibility to notify FHWA within 24 hours of all fatal accidents and to report to FHWA all reportable accidents in accordance with the procedures in part 394, Notification, Reporting and Recording of Accidents. This reporting requirement also includes information on whether a test for controlled substances was performed and the results of such a test.

Role of the Medical Review Officer

The FHWA is amending §§ 391.87, "Notification of test results and recordkeeping," and 391.97, "Prescribed drugs," to clarify the role of the MRO. Paragraph (b)(2) of § 391.87 currently requires the motor carrier to advise the driver of what drugs was identified when the result of the drug test is positive. A new paragraph (a) is now being added to § 391.87 to provide that the MRO is to inform the motor carrier of the identification of the controlled substances when the MRO reports a positive test to the motor carrier.

Section 391.97 is also being revised to clarify the MRO's role when seeking an explanation from the driver of a positive test result. The FHWA is adding a new paragraph to require the MRO to contact the motor carrier if necessary to locate the driver, and to document the MRO's efforts to locate the driver prior to reporting a positive test result to the motor carrier if the MRO is unable to locate the driver.

This amendment clarifies the role of the MRO in this situation and provides a safeguard for a driver who has tested positive. The FHWA believes it is the MRO's responsibility to make the determination regarding reporting a positive test result to the motor carrier as quickly as possible so that drivers who test positive, as determined by the MRO, can be taken off the road as quickly as possible. As the same time, drivers should be afforded the opportunity to explain positive test results. However, if the MRO is unable to contact the driver following the procedures, if any, agreed to by the MRO and the motor carrier and after making all reasonable efforts, the MRO may contact a management official of the motor carrier to inform the motor carrier to contact the driver and tell the driver to contact the MRO as quickly as possible. The MRO is not to tell the official why the MRO wants to speak with the driver. If the driver expressly refuses to talk to the MRO, or does not contact the MRO within 5 days after the driver was notified by the motor carrier official to contact the MRO, the MRO is to report the test as positive. When reporting the test as positive under these circumstances the MRO is to state that the driver was not contacted and the MRO shall provide the motor carrier with a report of the MRO's efforts to contact the driver.

The FHWA does not intend for this provision to allow a driver to continue to operate a commercial motor vehicle after the driver has had a reasonable opportunity to contact the MRO after being notified to do so by the motor carrier. The FHWA fully expects the motor carriers will establish procedures to require drivers to contact the MRO within a reasonable amount of time, but prior to being dispatched. While the final rule specifies that a driver who does not contact the MRO within five days when directed by the motor carrier will be determined by the MRO to have tested positive and therefore, be declared medically unqualified by the motor carrier, there is nothing in the rule to prohibit the motor carrier from taking action which would preclude a driver from continuing to operate a commercial motor vehicle, if the driver does not contact the MRO as directed by the motor carrier. The FHWA expects that a motor carrier will notify the MRO when the driver was contacted so that the 5-day period would start.

A driver may raise an affirmative defense under § 391.97(a) that the positive test result was attributable to the proper use of prescription medication. If the driver raises such a defense to the motor carrier in a case where the MRO had been unable to contact the driver, the motor carrier should refer the driver to the MRO to discuss the driver's explanation for the positive test result. Under § 40.33(c)(6), the MRO may reopen the verification on a positive test and, if the MRO concludes that there is a legitimate explanation, the MRO may declare the test to be negative.

Medical Examiner's Certificate and Medical Qualifications

The FHWA is amending § 391.41, Physical qualification of drivers, and § 391.43, Medical examination; certificate of physical examination, and the "Instructions for Performing and Recording Physical Examinations" to eliminate confusion regarding the medical examiner's role in controlled substances testing. The relationship between the biennial physical examination (49 CFR 391.45(b)) and the requirement for periodic controlled substances testing (49 CFR 391.105) are also being clarified.

The rules place responsibility on the motor carrier to ensure that a driver is tested for controlled substance in accordance with the requirements of subpart H and 49 CFR part 40, and that drivers are "clean" before being allowed to operate. The rules do not place this ultimate responsibility on the medical examiner. The rules also place responsibility on the MRO to determine whether the result of a controlled substances test performed under the requirements of subpart H is positive or negative, however, the medical examiner may serve as an MRO and therefore take on the responsibilities of the MRO.

While there is no explicit requirement that subpart H drug testing be performed as part of the physical examination of these drivers, paragraph (b)(12) of § 391.41 prohibits the use of certain drugs. Under the FMCSRs, a medical examiner may test a driver for drugs as part of the medical examination using any collection, testing protocol or positive threshold levels. However, such testing done at the direction of an examining physician is not a substitute for testing under subpart H. Controlled substances testing performed to comply with the biennial (periodic) drug testing requirement of subpart H must comply with all the requirements of subpart H and part 40. A person required to be tested in accordance with subpart H must be so tested, notwithstanding any other drug test which may have been performed.

The FHWA believes that a medical examiner who is familiar with the Federal Motor Carrier Safety Regulations and the nature of the functions performed by a commercial motor vehicle driver is best qualified to determine whether a person is medically fit to operate a commercial motor vehicle, including determining whether that person is drug free. The FHWA believes the medical examiner should continue to be able to require any reasonable test he/she believes is necessary to determine the medical qualifications of a driver.

The FHWA recognizes that there may be situations when the periodic drug test required by subpart H will be performed as part of the previously required biennial physical examination. Also there may be situations in which the

subpart H test is not performed on an individual who is required to be tested under subpart H when that individual is being examined to meet the requirements of § 391.41. Both situations are permissible under this final rule.

The FHWA has received numerous requests from medical examiners and others on how to proceed in these situations. They specifically want to know if a driver may be certified as medically qualified if a subpart H test for controlled substances is not performed (including the receipt of negative test results by the medical examiner).

A new paragraph (c) is being added to § 391.41 to state clearly that if a drug test is being performed as part of the physical examination to meet the requirements of subpart H, the medical examiner must ensure that the test complies with the requirements of subpart H and 49 CFR part 40. This includes the requirement that an MRO make the determination that a test result is either negative or positive for one of the five classes of controlled substances included in subpart H. In such a case, the medical examiner should, but is not required to, obtain this information from the MRO prior to certifying that the driver is otherwise medically qualified. (The driver would have to authorize the release of this information by the MRO to the medical examiner, in accordance with the requirements of part 40).

The FHWA recognizes that, in practice, the medical examiner or his/her staff may serve as the "collection site person" for the collection of a subpart H controlled substances test specimen as an activity separate from the physical examination. While the specimen may be collected during the same visit, in some cases it may not be done as part of the physical examination. If the collection is done to comply with the requirements of subpart H, the FHWA considers the physical examination and the collection of a controlled substances specimen to be two separate and distinct activities.

If, a subpart H drug test is not performed as part of the physical examination, the medical examiner may certify that the person is medically qualified to operate a commercial motor vehicle, provided the medical examiner satisfies him or herself that the driver meets the minimum requirements of 49 CFR 391.41(b). In such a case, a motor carrier may not permit the driver to operate a commercial motor vehicle until the person is tested in accordance with subpart H and a negative test result is received. The results of a controlled substances test must be maintained in the driver qualification file as required by § 391.87, Notification of test results and recordkeeping.

The medical examination form required by § 391.43(d) is being clarified to include two mutually exclusive statements regarding whether a drug test was performed as part of the physical examination and whether such test conforms to subpart H. This will enable the medical examiner to check one of two statements on the medical examination form indicating whether or not a drug test was performed, and if so, whether the test performed was in accordance with subpart H. The FHWA is adding this requirement in part, to alert motor carriers and drivers that a person may need to be tested for controlled substances under the requirements of subpart H prior to operating a commercial motor vehicle, notwithstanding the fact that the person was certified as fit to drive. Since a test for drugs during a periodic physical examination may not have been performed in accordance with the requirements of subpart H, a motor carrier may not rely solely on the information contained on a driver's medical examiner's certificate or form as proof the driver meets the requirements for periodic and/or pre-employment controlled substances testing. Rather, the motor carrier must assure itself that the person in fact was tested in accordance with subpart H.

The reference to subpart H in paragraph (b)(12) of § 391.41, Physical qualification of drivers, is being deleted as unnecessary, and to avoid confusion on the part of medical examiners who are called upon to examine and certify as fit commercial motor vehicle drivers who are not subject to testing under subpart H.

The requirements for drug testing under subpart H do not apply to interstate drivers of commercial motor vehicles with GVWRs of 26,000 pounds or less (unless such vehicles are used to transport hazardous materials in quantities requiring placarding or are designed to transport 15 or more persons, including the driver). However, these drivers are required to be physically examined and certified as medically qualified to drive and to possess a valid medical examiner's certificate as required under 49 CFR part 391, subpart E.

The FHWA is also amending the medical qualification standard regarding drug use to make it consistent with the controlled substances testing final rule. Section 391.41(b)(12) has provided that a driver is not qualified to drive a commercial motor vehicle in interstate commerce, if the driver uses a Schedule I controlled substance or other drug, an amphetamine, a narcotic, or any other habit-forming drug. Such non-qualification would last as long as the driver used such substance or drug, and a driver would be unqualified even if the driver's use of such a substance or drug was prescribed by a licensed medical practitioner. Section 392.4 of the FMCSRs, on the other hand, provides that a driver may not be on duty and possess, be under the influence of, or use any of these same substances, unless such possession or use of such drug or substance was pursuant to instructions of a physician who has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a motor vehicle (except for Schedule I substances which are, for the most part, illegal substances for which a prescription may not be lawfully obtained).

In adopting its controlled substances testing regulation, the FHWA carefully considered the issue of prescription drug use. In its June 14, 1988, NPRM, the FHWA stated that, "A driver would be allowed to use a controlled substance (except methadone) when taken as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties." 53 FR 22268, 22275. After receiving comment on this proposal, the FHWA adopted a prescription medication exception in its final controlled substances testing regulation. 53 FR 47134, 47153, November 21, 1988, (49 CFR 391.97). Under this exception, a medical review officer who receives a report of a positive drug test and who, after discussing this test result with the driver, determines that the driver's drug use was prescribed by a licensed physician who is familiar with the driver's medical history and assigned duties, will report the results of that drug test as negative to the motor carrier. *See* 53 FR 47144–47145; *see also,* 53 FR 47002, 47012–47013 (49 CFR 40.33).

Sections 391.97 and 392.4 envision certain lawful drug use which does not adversely affect a driver's ability to safely operate a motor vehicle, while § 391.41(b)(12) does not. As the regulations are currently written, a driver strictly complying with the requirements of § 392.4 might, technically, not be qualified to drive under § 391.41(b)(12), notwithstanding such compliance. Similarly, a driver who is technically not qualified to drive under § 391.41(b)(12) may be tested for the use of drugs, but such test may be reported as negative to the motor carrier if the medical review officer finds the "positive" test reported to the medical

review officer to be consistent with the prescription medication exception provided for in part 391, subpart H, and part 40 of the regulations.

This discrepancy among the regulations as currently written is not acceptable, since it could lead to a situation where a driver is permitted to drive under § 392.4 of the FMCSRs and the report of an actual drug test provided to an employing motor carrier is negative for drug use, while, in fact, under § 391.41(b)(12) of the FMCSRs, the driver is technically not qualified to drive. Because of the recent review of the use of prescription medication in the context of the controlled substances testing regulation, and public comment thereon, the FHWA has decided to eliminate this discrepancy and harmonize these provisions of the regulations by amending § 391.41(b)(12) of the FMCSRs to make it consistent with the provisions of 49 CFR 40.33(f), 391.97, and 392.4(c). Accordingly, § 391.41(b)(12) of the FMCSRs is amended to provide that a driver will be considered qualified to drive if the driver uses a controlled substance or drug as prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and who has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a motor vehicle. This change does not affect part 40 or subpart H. Rather, it simply permits a driver with a prescription to continue to drive if specified conditions are met, where absent this change and under the existing regulations, the driver might not technically be permitted to drive.

Technical Amendments to Clarify the Final Rule

The following amendments are included to make the rule clearer to understand, easier to implement and more effective. The amendments are discussed by section number. If the amendment has been discussed earlier, it is so noted and the discussion is not repeated.

Section 391.83—Applicability.

This section was first amended by technical amendment published on September 27, 1989 (54 FR 39546), revising the applicability date of the rule as it applies to foreign motor carriers and drivers. On December 27, 1989, the FHWA published an amendment to this provision to extend the implementation date for certain persons for whom a foreign government contends that the application of this rule would violate the law or policy of that foreign government. 54 FR 53294.

Section 391.85—Definitions

"Controlled Substance" is amended to read "Controlled Substances".

The definition of "random selection process" is revised to incorporate a line that was inadvertently deleted in the printing of the November 21, 1988, final rule. The provision regarding the random testing rate is deleted from the definition and placed more appropriately in § 391.109, Random testing requirements. Furthermore, this definition is revised to delete the term "subject to testing" to eliminate confusion in the use of this term in determining when a motor carrier is required to implement testing for controlled substances.

Section 391.87—Notification of test results and recordkeeping

A new paragraph (a) is added to clarify that the MRO is to identify the drug when reporting positive test results to the motor carrier. See discussion under the heading entitled "Responsibilities of the MRO" above.

Reasonable cause testing is added to new paragraph (c)(2) to make it clear that the motor carrier is to notify the driver of the results of all tests performed under the authority of this rule. The last sentence of this paragraph is also modified to correct an omission of a word and to replace the word "discovered" with "identified."

New paragraph (f) is revised to make it clear that the information to be maintained in the driver's qualification file is of sufficient detail to provide a verifiable record of the driver's participation in a controlled substances testing program. Items (1) through (3) are revised to clarify that the information required refers to the collection of a urine specimen. Item (1) is further revised to indicate the type of test for which the specimen was collected. Item (4) is also revised to clarify that the person or entity performing the collection, analysis, and determination of a positive test must be included. In general, this information will be on the chain of custody form. Item (5) is revised by changing the word "subnegative" to "negative" and to add that, in the case of a positive test, the drug identified is to be indicated.

In paragraph (g) the term, "Administrator" is replaced with the term, "Federal Highway Administrator." The term "Federal Highway Administrator" is defined in part 390.

In paragraph (h)(2), the term, "prequalification" is replaced with the term, "pre-employment."

Section 391.93—Implementation schedule

The discussion of the issues in this section are included in the responses to questions 2, 3, 4 and 5 under the section entitled "Interpretations."

Section 391.97—Prescribed drugs

The discussion of the amendments to this section are under the heading "Role of the MRO" above.

Section 391.99—Reasonable cause testing requirements

The FHWA is revising this section to clarify that company officials in addition to a driver's "supervisor" may initiate reasonable cause testing. The NPTC identified that in many cases, such as contract or leased drivers, a motor carrier official is not the "supervisor" of the driver. In such a situation, the wording of the requirement could be read to prohibit the motor carrier from initiating a reasonable cause test of an individual. The FHWA did not intend this to be the case. Therefore, the FHWA is adding the term "company official" in paragraph (c) in this section.

The FHWA is also deleting the word "employing" from paragraph (a) to further clarify that it is the intent of the rule for the motor carrier to initiate reasonable cause testing under this rule, regardless of whether the driver was an employee or a contract or leased driver or is simply being used by the motor carrier under some other arrangement.

Section 391.101—Reasonable cause testing procedures

Paragraph (b) is revised to make it clear that the testing is to conform with both the OST rule and this subpart.

Section 391.103—Pre-employment testing requirements

Paragraph (d)(3) is revised by replacing the term "anti-drug" with the term "controlled substances testing" to clarify the intent of the requirement.

Section 391.105—Biennial (periodic testing) requirements

The FHWA is amending this section to clarify when a motor carrier may discontinue periodic testing. The intent of paragraph (a) of this section is to ensure that a driver is tested at least once under the requirements of subpart H. This can be accomplished through either a pre-employment or pre-use test, a periodic test, or a random test. These three types of tests are performed before there is a triggering event which would require a test for controlled substances as is the case with reasonable cause and post-accident testing. Once this

requirement is met and the motor carrier is testing at the 50% rate as required in paragraph (c) of this section, the motor carrier may discontinue biennial (periodic) testing. This amendment is necessary because of the apparent conflict between paragraphs (a) and (c) of this section. With these amendments to both of these paragraphs, this conflict is resolved.

Paragraph (c) is revised to more clearly state when a motor carrier may discontinue periodic testing. The requirements are that (1) all the drivers for the motor carrier who are required to be tested have been tested at least once under the requirements of either periodic, pre-employment or random testing, and (2) the motor carrier is random testing at the 50% rate.

Section 391.107—Pre-employment and biennial testing procedures.

Paragraph (b) is revised so it is clear that testing is to conform to the OST rule and this subpart.

Section 391.109—Random testing requirements.

Two new paragraphs are added to this section. The new paragraph (a), which defines the random testing rate, was removed from the definition section (§ 391.85) and placed in this section. Also a new paragraph (d) has been added to clarify the use of consortium or other testing program in lieu of a motor carrier's program. The conditions placed on using such a program for the random testing requirements are similar to those for per-employment testing currently in the final rule.

Section 391.111—Random testing procedures.

Paragraph (b) is revised so it is clear that testing is to conform to the OST rule and this subpart.

Section 391.113—Post-accident testing requirements and § 391.115—Post-accident testing procedures.

The amendments to these two sections are discussed under the heading, "Post-accident testing."

Section 391.121—EAP training program.

Two typographical errors are corrected in this section. The word "causes" is replaced with the word "changes" in paragraph (b)(2) and paragraph (d) is redesignated as (c).

Section 391.43—Medical examination; certificate of physical examination.

The reference to the drug testing requirements of 49 CFR part 391, subpart H, added by the November 21, 1988, final rule is being deleted since upon further consideration, the FHWA determined that it is unnecessary and has confused many who seek to comply with it.

Requests for Comments

The FHWA anticipates that as motor carriers gain experience in drug testing under the requirements of the November 21, 1988, final rule and the OST rule, modifications to the final rule may be necessary. The FHWA requests comments on the issues discussed in this document. Additionally, the FHWA requests that commenters respond to the following questions:

1. Will the amended requirements for post-accident testing as described in this rule ensure that such tests will be performed and reported to the FHWA?

2. Are there additional ways in which the final rule on controlled substances testing may be streamlined while maintaining the basic requirements?

Regulatory Impact

The FHWA has considered the impacts of this final rule and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking technically amends the November 21, 1988, final rule, by clarifying and further defining certain issues contained therein. The impacts of the provisions addressed in this document have already been considered by the impact documentation prepared for the November 21, 1988, final rule. Any changes to the November 21, 1988, final rule resulting from this document would not appreciably affect the impact documentation initially prepared except for a clarification and in certain situations, a reduction in compliance requirements.

Such impact documentation contained in the November 21, 1988, final rule includes: A Regulatory Impact Analysis which is available for inspection in the headquarters office of the FHWA, 400 Seventh Street, SW., Washington, DC; small entity impact under the Regulatory Flexibility Act; and a Federalism Assessment under Executive Order 12612.

The amendments contained in this document clarify, interpret, and technically revise the provisions of the November 21, 1988, final rule. The issues addressed in this document were subject to public comment in an NPRM (6/14/88: 53 FR 22268). Since publication of the final rule, the FHWA has also received many additional comments on the issues addressed in this document. Since this document clarifies and reduces compliance requirements, the FHWA finds good cause to make the revisions final without further notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act (5 U.S.C. 553). Additional notice and opportunity for comment are not required under the regulatory policies and procedures of the DOT because it is not anticipated that such action could result in the receipt of useful information because of the ministerial and technical nature of this rulemaking action. However, as discussed above, public comment is requested on the amendments being issued to augment the FHWA's on-going review.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 391

Controlled substances, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: January 29, 1990.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, part 391 as set forth below.

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. Authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. App. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

2. In § 391.41, a new paragraph (c) is added and paragraph (b)(12) is revised to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12) Does not use a Schedule I drug or other substance identified in appendix D

to this subchapter [1], an amphetamine, a narcotic, or any other habit-forming drug, except that a driver may use such a substance or drug if the substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and who has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a motor vehicle; and

* * * * *

(c) Drivers subject to subpart H of this part shall be tested in compliance with the requirements of that subpart.

3. In § 391.43, paragraph (a) is redesignated as (a)(1) and a new paragraph (a)(2) is added; paragraph (d) is amended by revising the instructional paragraph for controlled substances testing and by modifying the medical examination form to add a new item controlled substances testing between the lines starting "Electrocardiograph" and "General comments". The revisions read as follows:

§ 391.43 Medical examination; certificate of medical examination.

(a)(1) * * *

(a)(2) The drug use verification procedures required by subpart H need not be performed by or under the supervision of the medical examiner. If not performed, the medical examiner shall assess compliance with § 391.41(b)(12) based on his/her observations, statements of the applicant and/or any tests performed.

* * * * *

(d) * * *

Instructions for Performing and Recording Physical Examination

* * * * *

Controlled Substances Testing. If a test for controlled substances is performed as part of the medical examination, the medical examiner is to check the box next to the statement, "Controlled substances test performed" on the medical examination form. If a test for controlled substances is not performed, the medical examiner is to check the box next to the statement, "Controlled substances test not performed." If a controlled substances test is performed under the requirements of subpart H of this part, then the medical examiner must also check the box next to the statement, "in accordance with subpart H," and must obtain information that the results of such test were negative prior to certifying that the driver is otherwise medically qualified. If a controlled substance test is performed but not in accordance with subpart H, the medical examiner must also check the box next to the statement, "not in accordance with subpart H," and ensure that the results of the test were negative prior to certifying that the driver is otherwise medically qualified.

* * * * *

EXAMINATION TO DETERMINE PHYSICAL CONDITION OF DRIVERS

* * * * *

Physical Examination

* * * * *

Controlled Substances Testing

[ ] Controlled substances test performed—
  [ ] In accordance with subpart H.
  [ ] Not in accordance with subpart H.
[ ] Controlled substances test NOT performed.

* * * * *

4. In § 391.43(f), the first paragraph of the Medical Examiner's Certificate is revised to read as follows:

* * * * *

Medical Examiner's Certificate

I certify that I have examined _____ (driver's name (print)) in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 392.41 through 391.49) and with knowledge of his/her duties, I find him/her qualified under the regulations.

* * * * *

Subpart H—Controlled Substances Testing

5. The heading for subpart H of part 391 is revised to read "Controlled Substances Testing."

6. In § 391.85, the term "Controlled substance" is changed to read "Controlled substances" and the definition "Random selection process" is revised as follows:

§ 391.85 Definitions.

As used in this subpart—

* * * * *

"Controlled substances" * * *.

* * * * *

"Random selection process" means that drug tests are unannounced and that every commercial motor vehicle driver of a motor carrier has an equal chance of being selected for testing.

* * * * *

7. In § 391.87, paragraphs (a) through (g) are redesignated as paragraphs (b) through (h) and a new paragraph (a) is added; newly redesignated paragraphs (c)(2) and (f) are revised; redesignated paragraph (g) is amended by adding the words "Federal Highway" before the word "Administrator;" and redesignated paragraph (h)(2) is amended by removing the word "prequalification" and replacing it with the word "pre-employment." The added and revised paragraphs read as follows:

§ 391.87 Notification of test results and recordkeeping.

(a) The MRO shall report to the motor carrier whether a driver's test was positive or negative and, if positive, the identity of the controlled substance for which the test was positive.

* * * * *

(c) * * *

(2) A driver of the results of a periodic, random, reasonable cause, or post-accident test conducted under this subpart, provided the results were positive. The driver must also be advised of what controlled substance was identified in any positive test.

* * * * *

(f) A motor carrier shall retain in the driver's qualification file such information that will indicate only the following:

(1) The types of controlled substances testing for which the driver submitted a urine specimen.

(2) The date of such collection.

(3) The location of such collection.

(4) The identity of person or entity:

(i) Performing the collection,

(ii) Analysis of the specimens, and

(iii) Serving as the MRO.

(5) Whether the test finding was "positive" or "negative" and, if "positive," the controlled substances identified in any positive test.

* * * * *

8. In § 391.97, the last sentence in paragraph (a) is removed; paragraph (b) is redesignated as paragraph (d); and new paragraphs (b) and (c) are added to read as follows:

§ 391.97 Prescribed drugs.

* * * * *

(b) The MRO shall afford a tested individual the opportunity to discuss a positive test result with the MRO before reporting the positive test result to the motor carrier. If an MRO, after making and documenting all reasonable efforts is unable to contact a tested person, the MRO shall contact a designated management official of the motor carrier to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the driver about the results of the test if:

(1) The driver expressly declines the opportunity to discuss the results of the test, or

(2) Within 5 days after a documented contact by a designated management official of the motor carrier instructing

[1] A copy of the Schedule I drugs and other substances may be obtained by writing to the Director, Office of Motor Carrier Standards, Washington, DC 20590, or to any Regional Office of Motor Carrier and Highway Safety of the Federal Highway Administration at the address given in § 390.27 of this subchapter.

the driver to contact the MRO, the driver has not done so.

(c) All positive tests reported to the motor carrier by the MRO in which the MRO did not discuss the results with the driver shall be so noted and be accompanied by complete documentation of the MRO's efforts to contact the driver including contacts with a motor carrier's designated management official.

* * * * *

9. In § 391.99, paragraph (b) is amended by removing the word "employing;" and paragraph (c) is revised to read as follows:

§ 391.99 Reasonable cause testing requirements.

* * * * *

(c) The conduct must be witnessed by at least two supervisors or company officials, if feasible. If not feasible, only one supervisor or company official need witness the conduct. The witness or witnesses must have received training in the identification of actions, appearance, or conduct of a commercial motor vehicle driver which are indicative of the use of a controlled substance.

* * * * *

10. In § 391.101, paragraph (b) is revised to read as follows:

§ 391.101 Reasonable cause testing procedures.

* * * * *

(b) A motor carrier shall ensure that the test performed under the requirements of § 391.99 of this subpart conforms with 49 CFR part 40 and this subpart.

11. In § 391.103, paragraph (d) is revised to read as follows:

§ 391.103 Pre-employment testing requirements.

* * * * *

(d) *Exceptions.* (1) A motor carrier may use a driver who is a regularly employed driver of another motor carrier without complying with paragraph (a) of this section, if the driver meets the requirement of § 391.65 of this subchapter.

(2) A motor carrier may use a driver who is not tested by the motor carrier without complying with paragraph (a) of this section, provided the motor carrier assures itself:

(i) That the driver has participated in a drug testing program that meets the requirements of this subpart within the previous 30 days and,

(ii) While participating in that program, was either

(A) Tested for controlled substances within the past 6 months (from the date of application with the motor carrier) or

(B) Participated in the drug testing program for the previous 12 months (from the date of application with the motor carrier).

(3) A motor carrier who exercises either paragraph (d)(1) or (d)(2) of this section shall contact the controlled substances testing program in which the driver participates or participated and shall obtain the following information:

(i) Name and address of the program.

(ii) Verification that the driver participates or participated in the program.

(iii) Verification that the program conforms to 49 CFR part 40.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results, positive or negative, of any test taken.

(4) The motor carrier shall retain the information required by this paragraph in the driver's qualification file required under § 391.51 of this part.

(5) A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every 6 months that the driver participates in a controlled substances testing program that meets the requirements of this subpart.

12. In § 391.105, paragraphs (a) and (c) are revised to read as follows:

§ 391.105 Biennial (periodic) testing requirements.

* * * * *

(a) A motor carrier shall require a driver to be tested in accordance with the procedures set forth in this subpart and part 40 of this title at least once every two years commencing with the driver's first medical examination required under § 391.45 of this part after the motor carrier's implementation of a drug testing program in accordance with this subpart.

* * * * *

(c) *Exceptions:* A motor carrier may discontinue periodic testing after a driver has been tested at least once under

(1) The requirements of paragraph (a) of this section;

(2) The requirements of § 391.103 of this subpart; or

(3) The requirements of § 391.109 of this subpart, and the motor carrier is testing its drivers at a 50 percent rate under its random testing program as required by § 391.109 of this subpart.

13. In § 391.107, paragraph (b) is revised to read as follows:

§ 391.107 Pre-employment and biennial testing procedures.

* * * * *

(b) A motor carrier shall ensure that the test preformed under the requirements of § 391.105 of this subpart conforms with 49 CFR part 40 and this subpart.

14. In § 391.109, paragraphs (a) and (b) are redesignated as paragraphs (b) and (c), respectively, and new paragraphs (a) and (d) are added as follows:

§ 391.109 Random testing requirements.

(a) The number of tests conducted under this section annually shall equal or exceed 50 percent (50%) of the average number of commercial motor vehicle driver positions for which testing is required to be tested under this subpart.

* * * * *

(d) *Exception.* A motor carrier may use the results of another's controlled substances testing program that a driver participates in to meet the requirements of this section provided that the motor carrier obtains the following information from the controlled substances testing program entity:

(1) Name and address of the program.

(2) Verification that the driver participates in the program.

(3) Verification that program conforms to the 49 CFR part 40.

(4) Verification that driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(5) The date the driver was last tested for controlled substances.

(6) The results, positive or negative, of any tests taken.

15. In § 391.111, paragraph (b) is revised to read as follows:

§ 391.111 Random testing procedures.

* * * * *

(b) A motor carrier shall ensure that the test performed under the requirements of § 391.109 of this subpart conforms with 49 CFR part 40 and this subpart.

§ 391.113 [Amended]

16. In § 391.113, paragraph (a) is revised and a new paragraph (c) is added to read as follows:

§ 391.113 Post-accident testing requirements.

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but not later than 32 hours,

after a reportable accident if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

* * * * *

(c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.

17. In § 391.115, paragraph (b) is revised and a new paragraph (c) is added as follows:

§ 391.115 Post-accident testing procedures.

* * * * *

(b) A driver shall ensure that a specimen is collected and forwarded to a National Institute on Drug Abuse (NIDA) certified laboratory in a manner which conforms to 49 CFR part 40.

(c) A motor carrier shall ensure that the test performed under the requirements of § 391.113 of this subpart conforms with 49 CFR part 40 and this subpart.

18. In § 391.119, paragraph (a)(2) is revised to read as follows:

§ 391.119 Employee Assistance Program.

(a) * * *

(2) An education and training component for supervisory personnel and company officials which addresses controlled substances; and

* * * * *

§ 391.121 [Amended]

19. In § 391.121, paragraph (b)(2) is amended by removing the word "causes" and replacing it with the word "changes" and paragraph (d) is redesignated (c).

[FR Doc. 90-2398 Filed 1-30-90; 8:45 am]

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federal register

Thursday
February 1, 1990

Part IV

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 565

Panamanian Transactions Regulations

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

ACTION: Final rule.

SUMMARY: This rule adds three new sections to the Panamanian Transactions Regulations, 31 CFR part 565 (the "Regulations"). The first clarifies that payment of all obligations owed the Government of Panama first falling due on or after December 20, 1989, may be made to the new government. The second authorizes certain transactions in property of the Government of Panama where the property enters the United States or the Government of Panama acquires an interest in the property on or after December 20, 1989. The third authorizes any person holding a blocked reserve account pursuant to § 565.509 ("509 Account") (1) to transfer the unadjusted gross balance of such account, with applicable interest, to the Government of Panama, or (2) to apply for a specific license to transfer an amount other than the gross balance upon concurrence of the Government of Panama. This rule implements a Presidential directive with respect to the new Government of Panama.

EFFECTIVE DATE: 7:20 a.m., Eastern Standard Time, December 20, 1989.

FOR FURTHER INFORMATION: Contact William B. Hoffman, Chief Counsel, Tel.: (202) 376–0408, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376–0236, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On December 20, 1989, the President directed the Secretary of the Treasury and the Secretary of State to lift the economic sanctions with respect to the democratically elected Government of Panama, headed by President Endara, and, in cooperation with that government, to effect an orderly unblocking of Panamanian government assets in the United States. In implementation of this directive, the Treasury Department is adding the following sections to the Regulations. A new § 565.410 is added, confirming that payments or transfers are authorized from the United States and from United States persons located in the territory of Panama, or by any person organized under the laws of Panama and owned or controlled by a United States person, directly to the Government of Panama for obligations that first arise on or after December 20, 1989. Such payments are not required to be made to the Government of Panama Account No. 2 or 3 at the Federal Reserve Bank of New York ("Account No. 2 or 3"), or credited to a 509 Account. A new § 565.510 is added authorizing all transactions with respect to property in the United States in which the Government of Panama has an interest, which interest arises or which property enters the United States on or after December 20, 1989, except with respect to property deposited or credited to a 509 Account or Account No. 2 or 3. Thus, for example, funds remitted to Account No. 2 on January 15, 1990, to correct a tax payment due December 15, 1989, remain blocked until licensed by the Office of Foreign Assets Control ("OFAC"). Because the payment obligation arose prior to December 20, 1989, payment requires a license from FAC.

A new general license is established in § 565.511 authorizing persons holding 509 Accounts to transfer the unadjusted gross balance of funds credited to such accounts, including applicable interest, to the Government of Panama. Such persons are required to submit a final report of OFAC within ten days of the date the transfer is made, in a format consistent with previous monthly 509 Account reports, setting forth a breakdown of each amount owed, the Panamanian governmental agency to which the amount is owed, and the nature of the tax or other underlying obligation for which the amount is owed. The report must include a certification that the amounts owed reflect interest earned, pursuant to § 565.509(b), at a rate not less than the weekly average effective Federal Funds rate for the period that the funds were owing to the Government of Panama, and that the transfer is in payment of all known obligations owing to that government which became payable during the period April 8, 1988, to December 20, 1989 (the "sanctions period").

Specific licenses are required for transfers by persons holding 509 Accounts who claim adjustments based on amounts already allegedly satisfied through measures by the Noriega regime such as, for example, unilateral setoff, garnishment, or other scheme, or in cases where greater principal amounts than those previously reported would be paid. Such persons must resolve discrepancies concerning amounts owed directly with the Government of Panama, and submit evidence of that government's concurrence in the amount to be paid from credits to a 509 Account in support of the license application before a license will be issued.

License applications submitted pursuant to § 565.511 must be accompanied by a final report in the same form as that described above. The report should also detail the differences (with explanations) between amounts reflected in the previous monthly 509 Account report and the final amount to be transferred. All amounts deducted from the gross balance of a reserve account must be listed separately and explained in full. License applicants must also include the certification required for use of the general license with respect to interest paid, and the fact that the transfer is in payment of all known obligations owing to that government which became payable during the sanctions period. OFAC reserves the option, as set forth in § 565.509(c) and all licenses issued authorizing the establishment of blocked reserve accounts, to require the payment of escrowed funds into Account No. 2.

The Government of Panama has issued a letter of assurances, dated January 4, 1990, with regard to payments it receives from 509 Accounts and from Account No. 2 as follows:

January 4, 1990

Mr. R. Richard Newcomb,
Director, Office of Foreign Assets Control, U.S. Department of Treasury, 1331 G Street NW., Washington, DC 20220

Dear Mr. Newcomb: We understand that the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury is beginning the process of licensing transfers to the Government of the Republic of Panama of amounts which were deposited into Government of Panama Account No. 2 at the Federal Reserve Bank of New York, or credited to a blocked reserve account under section 565.509 of the Panamanian Transactions Regulations, 31 CFR part 565 (the "Regulations"), pursuant to United States Executive Order No. 12635 and the Regulations, as amended. These amounts represent obligations owed by United States persons and by Panamanian entities owned or controlled by United States persons ("the companies") to the Government of the Republic of Panama, its agencies or instrumentalities.

This is to confirm the following principles which are applicable to all such amounts transferred to the Republic of Panama:

First, all amounts deposited by the companies into Account No. 2 or credited to blocked reserve accounts and later transferred to the Government of the Republic of Panama will be given proper credit against the specific underlying obligations to the Government of the Republic of Panama which the deposits or credits were intended to satisfy, and the Republic of Panama will not assess any penalties or interest for the nonpayment of such funds during the period in which the

funds were escrowed [other than the interest payments provided for by 31 CFR 565.509). To this end, we understand that OFAC will make available to the Government of the Republic of Panama full information in its possession on deposits into Account No. 2 and credits made to blocked reserve accounts, and the underlying obligations which gave rise to the deposits or credits. The Republic of Panama reserves the right to audit and verify the amounts due and owing to it by the companies and to assess the companies for any additional amounts revealed by such audit to be due and owing

Second, the Government of the Republic of Panama undertakes to honor and pay lawful obligations owed by the Noriega regime to the companies that made deposits into Account No. 2 or credits to blocked reserve accounts, but which the Noriega regime refused to pay (via unilateral garnishment, setoff, or other scheme) on the grounds that the companies had allegedly failed to pay tax or other corporate obligations. The Government of the Republic of Panama further undertakes to refund to the companies any amounts transferred which result in double payment to the Government of the Republic of Panama.

Third, the Government of the Republic of Panama undertakes to ensure the availability to the companies of fair and impartial procedures for resolving any disputes or other issues regarding amounts owed to the Republic of Panama by the companies that escrowed funds while the Noriega regime was in power.

Sincerely,

Carlos Rodriguez Fernandez Miranda,

Legal Representative in the United States of America of the Republic of Panama.

Ambassador of the Republic of Panama to the United States of America.

Because the Regulations involve a foreign affairs function, the provision of the Administrative Procedure Act, 5 USC 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Since no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 USC 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal regulations.

List of Subjects in 31 CFR Part 565

Panama, Blocking of assets, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR part 565 is amended as follows:

PART 565—PANAMANIAN TRANSACTIONS REGULATIONS

Subpart D—Interpretations

1. Section 565.410 is added to read as follows:

§ 565.410 Transfers not prohibited with respect to the recognized Government of Panama.

All transfers or payments to the Government of Panama for obligations that first arise on or after December 20, 1989, may be made to the recognized Government of Panama, including, without limitation, all Panamanian governmental entities listed in appendix A (with the exception of Marinexam, S.A. and Transit, S.A.): (a) From the United States; and (b) by any United States person located in the territory of Panama, or by any person organized under the laws of Panama and owned or controlled by a United States person.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 565.510 is added to read as follows:

§ 565.510 Authorization of new transactions concerning certain Panamanian property.

(a) Transactions involving property in which the Government of Panama has an interest are authorized where:

(1) The property comes within the jurisdiction of the United States or into the control or possession of any person located in the United States on or after December 20, 1989, except funds deposited or credited to a blocked reserve account pursuant to § 565.509, or to Government of Panama Account No. 2 or 3 at the Federal Reserve Bank of New York pursuant to §§ 565.202 or 565.203; or

(2) The interest in the property of the Government of Panama (*e.g.*, exports consigned to the Government of Panama) arises on or after December 20, 1989.

(b) Unless authorized by the Office of Foreign Assets Control, transactions remain prohibited pursuant to § 565.201 if they involve property in which the Government of Panama has an interest that:

(1) Was located in the United States or had come within the possession or control of persons located in the United States during the period between April 8, 1988, and December 20, 1989, or

(2) Is received in or enters the United States as an amount owed the Government of Panama with respect to an obligation for which payment was due prior to December 20, 1989.

3. Section 565.511 is added to read as follows:

§ 565.511 Transfer of funds credited to § 565.509 blocked reserve accounts.

(a) *Specific Licenses.* Specific licenses may be issued authorizing transfers of funds credited to blocked reserve accounts established under license issued pursuant to § 565.509, where the amount to be transferred is different (except for the addition of interest owed) from that reflected in the most recent monthly report filed with the Office of Foreign Assets Control pursuant to § 565.509(d). A specific license pursuant to this paragraph is required, for example, if the account holder claims adjustments based on amounts already allegedly satisfied through measures by the Noriega regime such as, for example, unilateral setoff, garnishment, or other scheme, or cases where greater principal amounts than those previously reported would be paid. Applications for specific licenses under this paragraph must include all of the following information in the form of a final report consistent with the format of previous monthly reports submitted pursuant to § 565.509(d):

(1) A breakdown of the final amounts owed the Government of Panama, identifying each tax or other obligation, and the governmental agency to which the amount is owed;

(2) An itemized list of the adjustments to the amounts set forth in the previous monthly report submitted pursuant to § 565.509(d), which result in the final amounts set forth in paragraph (a)(1) of this section, with explanations therefor;

(3) A certification in the following form:

I, [name of certifying official] hereby certify that all amounts stated in this application include interest at the rate and for the period required pursuant to 31 CFR § 565.509. I further certify that the amounts set forth in this application represent payment of all obligations known to [name of account holder] to the Government of Panama owed during the period from April 8, 1988, to December 20, 1989, payment of which was not otherwise authorized by the Office of Foreign Assets Control and made during that period.

and;

(4) The written concurrence of the Government of Panama to the amount to be transferred.

(b) *General License.* Transfers directly to the Government of Panama of the unadjusted gross balances of blocked reserve accounts established under license issued pursuant to § 565.509 are authorized. Persons electing to transfer gross balances must submit a final report within ten days after the transfer is made, containing the information and certification required in paragraphs (a) (1) and (3) of this section. In addition, the final report must be accompanied by a copy of the money

transfer (check, bank wire, etc.) to the Government of Panama.

Dated: January 24, 1990.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 25, 1990.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 90-2530 Filed 1-31-90; 9:42 am]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List: January 19, 1990.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
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February 8	February 23	March 12	March 26	April 9	May 9
February 9	February 26	March 12	March 26	April 10	May 10
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February 13	February 28	March 15	March 30	April 16	May 14
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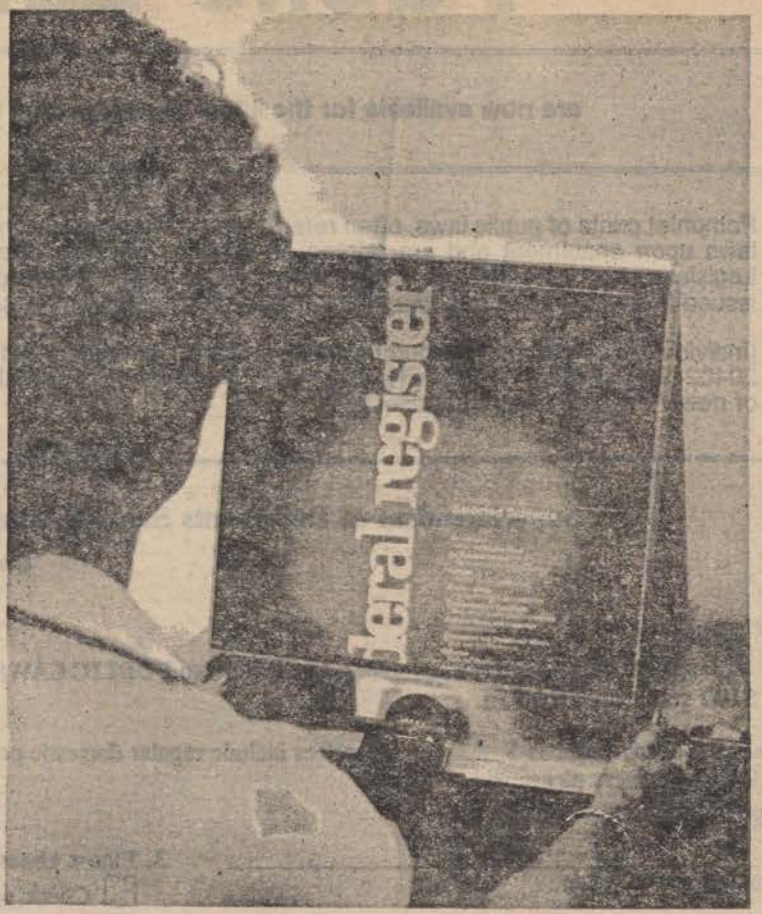

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